

TRANSSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 625. *Aug 4-3*

ELOISA L. BERGERE FOR HERSELF AND THE OTHER
HEIRS OF MANUEL ANTONIO OTERO AND MIGUEL
ANTONIO OTERO, APPELLANT,

vs.

THE UNITED STATES ET AL.

FILED MAY 22, 1895.

No. 638. *Aug 4-6*

THE UNITED STATES, APPELLANT,

vs.

ELOISA L. BERGERE FOR HERSELF AND THE OTHER
HEIRS OF MANUEL ANTONIO OTERO AND MIGUEL
ANTONIO OTERO.

FILED JULY 16, 1895.

APPEALS FROM THE COURT OF PRIVATE LAND CLAIMS.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 625.

ELOISA L. BERGERE FOR HERSELF AND THE OTHER
HEIRS OF MANUEL ANTONIO OTERO AND MIGUEL
ANTONIO OTERO, APPELLANT,

vs.

THE UNITED STATES ET AL.

No. 658.

THE UNITED STATES, APPELLANT,

vs.

ELOISA L. BERGERE FOR HERSELF AND THE OTHER
HEIRS OF MANUEL ANTONIO OTERO AND MIGUEL
ANTONIO OTERO.

APPEALS FROM THE COURT OF PRIVATE LAND CLAIMS.

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1 UNITED STATES OF AMERICA,
Territory of New Mexico, ss:

Be it remembered that heretofore, to wit, on the 9th day of January, A. D. 1893, Eloisa L. Bergere for herself and the other heirs of Manuel Antonio Otero and Miguel Antonio Otero, by her attorneys, James W. Vroom and P. L. Vanderveer, filed in the office of the clerk of the Court of Private Land Claims in and for the Territory of New Mexico a petition, in which said Eloisa L. Bergere et al. are plaintiffs and the United States of America is defendant; which said petition is in the words and figures following, to wit:

2 UNITED STATES OF AMERICA,
Territory of New Mexico :

In the Court of Private Land Claims between Eloisa L. Bergere for herself and the other heirs of Manuel Antonio Otero and the United States of America and Joel P. Whitney and Franklin H. Story.

Petition.

To the Honorable the Chief Justice and Associate Justices of the Court of Private Land Claims:

Your petitioner, a resident of the Territory of New Mexico, exhibits this her petition against the United States of America and Joel P. Whitney and Franklin H. Story, respectfully shows unto your honors that on February 4th Bartolome Baca appeared to the then governor of the province of New Mexico for a grant of land in said province in manner following, to wit:

His Excellency the ACTING GOVERNOR:

Bartolome Baca, captain of the volunteer militia company of cavalry of the village of Albuquerque, residing in the jurisdiction of Tome, before you with the greatest respect and subordination, as by law required, represents—

That he has a number of wool-growing stock, horn cattle, and horses without possessing legitimate property in which to place them, together with shepherds, cattle herders, and horse herders, to have charge of them and secure their preservation, they moving between different places, exposed to all the contingencies which their being so scattered causes. There being vacant on the other side of the Abo Mountain a tract of land which they call the Torreon, and which embraces on the north side to the Buffalo Creek (Monte del Cibolo), on the south to the Crow Springs (Ojo del Cuervo), on the east to the springs of water which they call the Estancia Springs, and on the west to the said Abo Mountains, he prays you to be pleased to grant the same in royal possession in the exercise of the powers conferred by His Majesty, in order to establish thereon a permanent ranch or hacienda, which he engages to occupy with his stock, sustaining the same with boys (masos), servants, and armed men (armados), who may defend it against the invasions of the enemies without abandoning it; and

3 he will also, should it to him be possible, open land for cultivation, whether they be irrigable or temporal, for the advancement of agriculture, for although the watering places it contains are sterile

and small, he proposes to improve them with reservoirs and by other expedients which will give them all the yields that may be; and he guarantees that it has no present owner whatever, nor has there ever been any known for it. Therefore he requests you to be pleased to grant his petition in conformity with the law, commanding the royal justice of his district to give him legal possession, with the corresponding documents and other formalities which are required, whereby he will receive favor, grace, and justice; he declares that he is not in dissimulation and what is necessary, etc.

SAN FERNANDO, February 4th, 1819.

That the said governor granted the said petition in manner following, to wit:

SANTA FE, July 2nd, 1819.

As he prays for according to law, with the understanding that no injury results to a third party, but rather stock raising and cultivation will be enhanced under the conditions asked, Mr. Jose Garcia de la Mora will proceed to give the possession, designated the limits and officiating duly, which being concluded, he will transmit the expediente to the superior office so that, if it be approved, the corresponding testimonio may be ordered to be given to the petitioner.

(Signed)

MELGARES.

That afterwards, to wit, on September 12th, 1819, the said Jose de la Mora placed the said Baca in possession of the land granted to him as aforesaid in the manner following, to wit:

In execution of the decree of July 2nd, 1819, I, Jose Garcia de la Mora, the justice commissioned by Lieutenant-Colonel Facundo Melgares, governor of the province of New Mexico proceeded, in company with captain of volunteer militia, Bartolome Baca, to examine the tract he applies for, and knowing that it is wild land and without injury to a third party, I have placed him in possession in the name of the King. I designated to him as his boundaries on the south the Crow Springs (Ojo del Cuervo) following its range (cordillera) to the Chico Springs (Ojo del Chico); on the east to the Pedernal Hill (Cerro del Pedernal); on the north the Buffalo Springs (Ojo del Cibolo); on the east the summit of the mountain (altura de la cierra); the said gentleman remaining acquiescent and grateful to the said magistrate for the benefit done him, obligating himself to increase with his herds may subsist, delivering the whole for your approval, for the satisfaction of the fees which may be enclosed upon them.

4 Therefore I transmit this to the superior authority, so that being seen by you it may determine as it shall seem just.

That afterwards, and some time during the said year 1819, the said expediente was by the said justice of the peace transmitted to the said Facundo Melgares, the then governor of the said province, and by him approved; and that thereupon the corresponding testimonio of the grant was then and there delivered to the said Baca, and he entered into the full and lawful possession of the said tract of land so as aforesaid granted to him. That copies and transcripts and translations of the said papers of the grant are herewith filed in duplicate, the originals being on file in the office of the surveyor-general for New Mexico as private land claim No. 126.

And your petitioner further shows that afterwards, to wit: On November the 28th, 1829, by and with the permission and assent of the said Baca, the then governor of the Territory of New Mexico, granted a portion of the said tract of land, so as aforesaid granted to the said Baca, to the town of Manzano; and that your petitioner further shows that she, as the legal representative of the said Baca, makes no claim of title to the tract of land so granted to the town of Manzano. And your petitioner further shows that afterwards, to wit: on March 17th, 1834, by and with the permission and assent of the said Baca, the then governor of the Territory of New Mexico, granted a portion of the said tract of land so as aforesaid granted to the said Baca, to the town of Tajique, and your petitioner further shows that she, as the legal representative of the said Baca, makes no claim of title to the tract of land so granted to the town of Tajique.

And your petitioner further shows that afterwards, to wit: on March 3rd, 1841, by and with the permission and assent of the said Baca, the then governor of the department of New Mexico, granted a portion of the said tract of land so as aforesaid granted to the said Baca, to the town of Torreon; and your petitioner further shows that, as the legal representative of the said Baca, she makes no title to the tract of land so granted to the town of Torreon.

And your petitioner further shows that afterwards, to wit: on _____ day of _____, 1841, by and with the permission and assent of the said Baca, the governor of the department of New Mexico granted a portion of the said tract of land, so as aforesaid granted to the said Baca, to the town of Chilili; and your petitioner further shows that she, as the legal representative of the said Baca, makes no claim of title to the tract of land so granted to the town of Chilili.

5 And your petitioner further shows that afterwards, to wit, on December the 7th, 1843, the then governor of the department of New Mexico made a pretended grant of the portion of the said tract of land, so as aforesaid granted to the said Baca, to one Antonio Sandoval, and that said pretended grant of land was illegal and void.

And your petitioner further shows that said defendant, Whitney and Story, sometimes allege and pretend that they are the lawful owners of the said tract of land so as aforesaid granted to the said Antonio Sandoval, and which is included within the boundaries of the grant so as aforesaid made to Bartolome Baca, and that they pretend to claim the ownership of the said tract of land by reason of certain proceedings heretofore had by the then governor of the department of New Mexico, to wit: That the said Sandoval petitioned on December 5, 1845, the said governor to grant him the said tract of land because of services rendered to the State and monies due to him from the Government, in his petition praying that your excellency, in your benevolence, be pleased in the name of the supreme authority of the Mexican nation to do me the favor and grace to grant me in possession integrum (unconditional) the said tract of land, because the land is vacant and in condition of mortmain. That thereupon, or December 7, 1845, the governor acceded to the petition in the manner following, to wit:

"The Government being convinced of the valuable services Don Antonio Sandoval has rendered and is now rendering the country, as well as during the time to which he refers as also during the six years he served

administering the prefecture of the second district, with a salary of fifteen hundred dollars, of which not one-half has been paid to him, the sum due him amounting to nine thousand dollars; and the statements in the petition being true, I do, in execution of the power in me vested by the laws, and also in consideration of all the premises, and as a just title acquired, make to him a grant of the land that he solicits, with all the dimensions and pasture lands he asks, that he may enjoy the same, in the name of the supreme government of the Mexican nation, and under my concession free and exempt from all taxation;" and that afterwards, on December 15, 1845, the said Sandoval was placed in juridical possession of the said tract of land, and that by reason of the said proceedings the said Sandoval became invested with a full and perfect title to the said tract of land, to himself and heirs and assigns; and that they, the said defendants, Whitney and Story, by reason of certain mesne conveyances of the said land, are now the lawful owners of the same. Whereas your petitioner charges the contrary thereof to be true, and that no lawful

6 grant was made to or title vested in the said Sandoval by reason of the said proceedings of the then governor of New Mexico; that the authority to make grants of the vacant lands in the said department was conferred upon the governor and the departmental assembly by the decree of the Mexican Congress of August 18, 1824, and the regulations of November 21, 1828, and that by the said decree and the said regulations the governor had only power to grant the vacant lands to individuals for the purpose of cultivation and inhabitancy; that he had no power to make grants of land because of private merit or public services, nor for the consideration of money due by the Government; that such power was, by Article XL of the decree of 1824, reserved to the supreme executive of the nation; and your petitioner further charges that the grant was unlawful in this respect; that Article XII of the said decree of 1824 provides that "there shall not be granted to an individual, with the right of ownership, more than one square league of irrigable land, four superficial ones of land dependent on the seasons, and six superficial ones for the purpose of rearing cattle;" that eleven square leagues are equivalent to about forty-eight thousand acres, and that on November 28, 1845, prior to the date of this alleged grant to the said Sandoval, the then governor of the department to the said Sandoval, which said grant is commonly called the Bosque del Apache, and that the said Sandoval was, in the month of December, 1848, duly placed in the juridical possession of the same; which said grant was duly confirmed to the said Sandoval by the United States of America by the act of Congress entitled "An act to confirm said private land claims in the Territory of New Mexico," approved June 21, 1860; and the same having been duly surveyed to include 60,117 acres was patented to the said Sandoval and his legal representatives in the year 1877; and that by reason of said grant of the Bosque del Apache to the said Sandoval he, the said Sandoval, had received the full quantity of the vacant land of the department which the governor was, by the said decree and regulations, empowered to grant to him as an individual; and that the subsequent grant of land to the said Sandoval, under which the said defendants, Whitney and Story, claim title, was illegal and void.

And your petitioner further shows that the said defendants, Whitney and Story, at other times allege and pretend that the said grant to the said

Sandoval was a lawful grant, and that the said was lawfully made by the then governor of New Mexico; that some time after the adoption, in 1836, of the central form of government by the mexican nation the then President of Mexico conferred by decree, or otherwise, upon the governor of the department of New Mexico the power and authority to
7 grant the public lands in the said department in such manner and quantity as he deemed best without regard to the limitations and restrictions embodied in the said decree of August, 1824, and the regulations of November 21, 1828; whereas your petitioner charges the contrary thereof to be true, and alleges that no special power as aforesaid was, as aforesaid, conferred upon the said governor by the supreme authority of Mexico, and that if such power was conferred as aforesaid it was unlawfully exercised by the said governor in making the said grants to the said Sandoval without the concurrence and assent of the departmental assembly.

And your petitioner further shows that the said defendants, Whitney and Story, at other times allege and pretend that the said grant to the said Sandoval was a lawful grant, and that power was conferred upon the governor to make the same by the laws of the Republic of Mexico of 1843, commonly called the Bases Organicas; whereas your petitioner charges the contrary thereof to be true, and that the said laws conferred no new powers upon the governor of the department respecting the granting of the public domain; that it specifically provided, by title 7 of the said laws, which treats of the powers of the departmental assembly, that they shall have power to decree what is useful and conformable respecting the acquisition, alienation, and exchanges of property that may belong to the community and the department; and that with regard to the alienation of the public lands the existing laws shall prevail; and that the existing laws at that time with respect to the granting of the public domain were the said decree of August, 1824, and the regulations of November 21, 1828.

And your petitioner further shows that the said defendants, Whitney and Story, at other times allege and pretend that although the said tract of land so as aforesaid granted to the said Sandoval formed a part of the tract of land so as aforesaid granted to the said Baca, yet that the said land granted to the said Baca had been abandoned by him, and that the same had, by reason of such abandonment, become vacant land and had reverted to the Mexican Government and had become a part of the public domain of the Republic of Mexico; whereas your petitioner charges the contrary thereof to be true, and that the said Baca prior to and at the time the said pretended grant of land was made to the said Sandoval was in full and lawful possession of all the said tract of land so as aforesaid granted to him, and that the same and no part thereof had been abandoned by him; and your petitioner further alleges that if the said tract of land had been abandoned by the said Baca as above alleged by the said defendants, Whitney and Story, it would not because thereof re vested the
8 title to the said tract of land as a part of the public domain in the Republic of Mexico.

And your petitioner further shows that the said defendants Whitney and Story at other times allege and pretend that the said land having been, as they allege, abandoned by the said Baca, that the said Sandoval denounced the same to the governor and departmental assembly of the said department of New Mexico as abandoned and vacant land, and that there-

upon the said Sandoval petitioned to the then governor of the said department for a new grant to him of a portion of the tract of land so as aforesaid granted to the said Baena and by him abandoned; and that thereupon the said governor and the said departmental assembly adjudged the said land so as aforesaid granted to the said Baena to have been abandoned by him, and to be vacant land, and that thereupon the said governor of the said department granted to the said Sandoval the tract of land so as aforesaid petitioned by him. Whereas your petitioner charges the contrary thereof to be true, and that the said grant was not, as aforesaid, denounced by the said Sandoval as abandoned and vacant land, and, because thereof, granted to the said Sandoval; and further charges that no civil or judicial proceeding of any nature has been had by the governor and departmental assembly, or other lawfully constituted authority of New Mexico, whereby the said Baena has been adjudged to have forfeited his title to and possession of the said tract of land; and your petitioner further charges that no lawful grant of the said tract of land so as aforesaid petitioned for by the said Sandoval was at any time made to the said Sandoval by the governor of the department of New Mexico.

And your petitioner further shows that the said defendants Whitney and Story at other times allege and pretend that Faenundo Melgares, the then governor of the province of New Mexico, had no lawful power or authority to make grants of the vacant lands of the said province, and alleges that such power was vested in the intendent of the intendency of Durango, or in the commandant general of the provincias internas; whereas your petitioner charges the contrary thereof to be true and alleges that by the decree of the Spanish Government of December 4, 1786, the then province of New Mexico became a part of the intendency of the department of Durango, and was in some respects subject to the authority of such intendent; that subsequently, and by the decrees of November 23 and 24, 1792, the said province of New Mexico became one of the provinces of the comandancia general of the provincias internas, and alone subject to the control of the commandant general of the said provinces; and that subsequently, by virtue of the decree of 1804, the said provinces

became one of the provinces of Mexico and alone subject to the
 9 authority of the viceroy; that the said Faenundo Melgares was duly appointed by the then viceroy of Mexico the governor of said province of New Mexico, and exercised the powers and performed the duties of said office of governor, alone subject to the authority of the said viceroy, and was in no manner subject to, or under the authority of, the intendent of Durango or the commandant general of the provincias internas; and that as such governor he lawfully granted in full ownership the said tract of land to the said Baena, and that such grant was legal and valid and invested the said Baena with title in full ownership without the subsequent approval of the said grant by either the intendent of Durango or the commandant general of the provincias internas, or of the viceroy of Mexico.

And your petitioner further shows that the said grant of land is located in the county of Valencia, in the Territory of New Mexico; that the same has not been surveyed; that the boundaries thereof are, as stated in the paper of juridical possession, on the south the Crow Spring (Ojo del Cuervo) following its range (cordillera) to the Chico Springs (Ojo del Chico); on the east to the Pedernal Hills (Cerro del Pedernal); on the north the

Buffalo Springs (Ojo del Cibolo); on the west the summit of the mountain (altura de la sierra) as will more fully appear by the map of the said grant or tract of land hereunto annexed and made of your petitioner's petition.

And your petitioner further shows that pursuant to the statute of the United States in such case made and provided the said grant so as aforesaid made to the said Baen, was, some time in the year 1878, presented for confirmation to the surveyor-general of New Mexico, and that the same was by the said surveyor-general disallowed and rejected, and by him transmitted to the Congress of the United States for its action thereon, but that so far as your petitioner is informed the said Congress has taken no action in regard to the said grant claimed. And your petitioner further shows that at the time of the making of the said grants to the said Baen, he became seized of the same in full property and that the said grant was a perfect grant, and that he and his legal representatives were so seized when the Territory of New Mexico was, in 1848, ceded to the United States of America by the Republic of Mexico, and with a fee simple title to the same is now in your petitioner and in the other heirs of Manuel Antonio Otero and Miguel Antonio Otero, as the legal representatives of the said Baen.

Your petitioner therefore prays that the validity of the title to the said grant so as aforesaid made to the said Baen and the rights of your petitioner and the other heirs as aforesaid thereto may be inquired into and determined by this honorable court, and that the said tract of land so 10 as aforesaid granted to the said Baen, with the exceptions of the said tracts so as aforesaid granted to the said towns of Manzano, Tajique, Torreon, may be confirmed to the said Bartolome Baen, his heirs, and legal representatives, and that your petitioner may have such other and further relief as may be agreeable to equity and good conscience.

Your petitioners will ever pray, &c.

JAMES W. VROOM &
PETER L. VAN DER VEER,
Sols. of the Petitioners.

J. B. O'BRYAN, *of Counsel.*

UNITED STATES OF AMERICA,
Territory of New Mexico vs:

Peter L. Van der Veer, being duly sworn according to law, on his oath says that he is one of the solicitors for the petitioner herein; that the allegations in the above bill are true to the best of his knowledge and belief, and that the reason why this oath is made be deponent and not by the petitioner herein is because the said petitioner is not now in the county of Santa Fe and can not be conveniently reached for the purpose of making this oath.

PETER L. VAN DER VEER.

Subscribed and sworn to before me this 4th day of January, A. D. 1893.

JAMES H. PURDY,
Notary Public, Santa Fe County, New Mexico.

Answer under oath to this petition is waived.

P. L. VAN DER VEER.
JAMES W. VROOM.

12 And be it further remembered that afterwards, to wit, on the 26th day December, A. D. 1894, a stipulation was filed in the said cause, in the office of said clerk, which said stipulation is in the words and figures, to wit:

13 United States of America, Court of Private Land Claims, district of New Mexico,

ELOISA L. BERGERE ET AL.,
vs.
THE UNITED STATES, } No. 58.

Stipulation.

It is hereby stipulated and agreed that in the above-entitled cause the translation made by Mr. Clarence Key of the muniments of title shall be taken and considered as a correct translation thereof.

T. B. CATRON,
Attorney for Plaintiffs.
MATT. G. REYNOLDS,
U. S. Attorney.

14 And be it remembered that afterwards, to wit, on the 26th day of December, A. D. 1894, a transcript and translation of the original papers were filed in said cause, in the office of said clerk, in lieu of papers referred to in stenographer's notes as "translation of the original paper" and as "paper" marked No. 2, file 123, recorded on pages 651 to 653 of vol. 6, private land claim records," which said transcript and translation are in the words and figures following, to wit:

15 To the ACTING GOVERNOR:

Don Bartolome Baca, captain of the volunteer militia company of cavalry of the villa of Alburquerque, residing in the jurisdiction of Tome, before you with the greatest respect and subordination, as by law required, represents: That he has a number of sheep, horned cattle, and horses, without legitimate property on which to keep them together under shepherds, cattle herders, and horse herders, to take care of them and secure their safety, they now roving over different places exposed to all the contingencies arising from their being scattered. There being vacant on *on* the other side of the Abó Mountain a tract called the Torreon, and which extends, on the north to the Monte del Cibolo; on the south to the Ojo del Cuervo; on the east to the springs called the Estancia Springs; on the west to the said Abó Mountain; he prays you to be pleased to grant the same in real possession, in the exercise of the powers upon you conferred by His Majesty, in order to establish thereon a permanent ranch or hacienda, which he engages to occupy with his stock, sustaining the same with armed servants, who may defend it against the incursions of the enemy without abandoning it; and he will also, if possible, open lands for cultivation, whether irrigable or dependent upon the seasons, for the advancement of agriculture, and although the water sources it contains are small and uncertain, he proposes to improve them with reservoirs and

other appliances which will secure every advantage possible; and he affirms that it has at present no owner, and that it never has had any known owner.

Wherefore, he prays you to be pleased to grant this his petition in conformity with law, and to direct the royal judge of his district to give him legal possession, with the proper documents and other formalities which are required, whereby he will receive favor, grace, and justice. I swear that I do not act in bad faith, and in that which is necessary, &c.

San Fernando, February 4, 1819.

BARTOLOME BACA. [RUBRIC.]

SANTA FE, July 2, 1819.

As he asks it according to law, and I understanding that no injury results to any third party, but, on the contrary, increase of stock raising and agriculture under the conditions asked.

Don José Garcia de la Mora will proceed to give the possession, designating limits and doing what is proper, which being concluded he will transmit the expediente to this superior office, so that if it be approved the proper testimonio may be ordered to be given to the petitioner.

MELGARES. [RUBRIC.]

16 In execution of the decree of July 2, 1819, I, José Garcia de la Mora, the judge commissioned by Lieutenant-Colonel Facundo Melgares, governor of the province of New Mexico, proceeded in company with captain of volunteer militia, Bartolome Baca, who by his merits and conduct in the service of both majesties, as has been proved by the offices which have been conferred upon him of alcalde mayor, and in other services in the field, the governors always appointing him commander of campaigns and scouting parties, which he always led with honor and valor, and in addition to all this he has always surpassed others in voluntary contributions, setting a good example to his inferiors. Wherefore, in reward of all these merits and services I have proceeded in his company to examine the tract he applies for, and knowing that it is wild land, and that no injury results to any third party, I have placed him in possession in the name of the King (whom may God preserve), and I took him by the hand and led him over the whole tract, he shouting and plucking up grass and throwing stones in the name of the King, saying, "Long live our beloved monarch, Don Fernando VII, whom God may preserve," with hurrahs and shouts, and I shed tears of delight at his acclamations; and I designated to him for his boundaries: On the south, the Ojo del Cuervo, following its line to the Ojo del Chico; on the east, the Cerro del Pedernal; on the north, the Ojo del Cibolo; on the west, the Altura de la Sierra (summit of the mountain range); the said gentleman being satisfied and grateful to the said governor for the benefit conferred upon him, binding himself to increase by his intelligence the limited waters which have been donated to him in order that his herds may be maintained, to which he is bound, transmitting the whole for your approval, he will satisfy the fees which may be charged to him.

Wherefore, I transmit this to the superior authority in order that it being examined by you, you may decide as you may deem just.

San Fernando, September 12, 1819. To which I certify with my two assisting witnesses.

JOSÉ GARCIA DE LA MORA. [RÚBRICA.]

Assisting witness :

JOSÉ ANDRÉS CALLER. [RÚBRICA.]

Assisting witness :

FRANCO. GALIZ. [RÚBRICA.]

[Torn] the boundaries by [torn].

[RÚBRICA.]

[Torn] ELGARES.

17 Sor. GOBERNADOR Y NTO.:

D. Bartolome Baca, capitán de la compa. de milicias voluntarias de caballería de la villa de Alburquerque, avecidade en la jurisdiccion de Tome, ante Vmd. con el mayor respeto y subordinacion que en derecho se requiere, hace precente que tiene algun numero de ganados lanares, ganado bacuno y cavalladas sin tener propiedad lexitima para ponerlos reunidos vajo de pastores, vaqueros y caballerangos que los custodian, y aseguren su existencia manteniendose ambulantes por diferentes parages expuestes á todas las contingencias que acarrea lo disperso de ellos; hallandose realengo en el otro lado de la sierra de Abó un sitio que llaman el Torreon, y comprende por el norte hasta el Monte del Cibolo, por el sur hasta el Ojo del Cuerbo, por el oriente hasta los ojos del agua que llaman la Estancia, y por el poniente hasta la citada Sierra de Abó; suplica á Vmd. se sirva sederselo por pociion real en uso de las facultades que por S. M. le son conferidas, para formar en el un rancho ó hacienda perpetua que protesta ocupar con sus bienes, sosteniendolo con meses sirvientes y armados que lo defiendan de imbaciones de los enemigos sin desampararlo, como tambien si le fuese posible habrira tierras de lavor, bien sean de riego ó temporales en propagacion de la agricultura, pues aunque los aguages que contiene son esteriles y cortos, se somete á havonarlos con tanques y otras providencias que les den toda la fecundidad que se pueda; y asegura no tener dueño ninguno en la precente ni se le han conocido nunca per lo que A. V. suplica se sirva aseder á esta su solicitud conforme á derecho, mandando al juez real de su partido le de posecion legitima con las correspondientes escrituras y demas formalidades que se requieren, en que recibira merced, gracia y justicia, juro no ser de malicia y lo necesario, &c.

San Fernando, 4 de febrero 1819.

BARTOLOME BACA. [RÚBRICA.]

STA. FE, julio 2 de 1819.

Como lo pide arreglado á derecho y en concepto de qe. no resulta perjuicio de tercero antes vien haumento á las erias y lavoress vajo las condiciones que se pide.

Dn. José Garcia de la Mora pasara á dar la posesion, señalando limites y obrando como corresponde lo qe. concluido remitira el expedite, á esta superioridad pa. qe. si se aprueba se mande dar el testimonio corresponte, al suplicante.

MELGARES. [RÚBRICA.]

18 En cumpto. al decreto de julio de mil ochocientos diez y nueve,
 yo, el juez comisionado, Don José García de la Mora, por el sor. te.
 coronel y govor, de la prova. del Nuevo Mexeo., Dn. Facundo Melgares,
 pase en compa. del capn. de milicias voluntarias, Dn. Bartolome Baca,
 quien por sus meritos y conducta al servicio de ambas magestades como se
 ha provado, en los empleos que se le han dado de alcalde mayor, y otros
 servicios de campo recomendandole siempre los señores gobernadores el
 mando de comandante de armas, en campañas y corredurias lo qe. siempre
 ha desempeñado con honradas, y valor y á mas de todo esto en los dona-
 tivos voluntarios siempre se ha aventajado mas que otros dando el buen
 exemplo á sus subditos; por tanto en premio de todos estos meritos, y
 servicios e pasado en su compa. á reconocer el citio que pide y conociendo
 que esta yerno y sin perjuicio de tercero lo he puesto en posesion, á nombre
 del Rey (Q. D. G.) y lo coji de la mano y lo pasie en todo el citio, dando
 voses, y arrancando zacates y tirando piedras, á nombre del Rey diciendo
 que viva nro. amado monarca, el Sor. Dn. Fernando Septimo (Q. D. G.)
 á gritos y voses que del gusto de sus boses derrame lagrimas y le señale
 por sus linderos por el sur el Ojo del Cuerbo corriendo su cordillera al
 Ojo del Chico, por el oriente el Zerro del Pedernal, por el norte el Ojo
 del Cibolo, por el poniente la Altura de la Zierra, quedando dho. sor. con-
 venido y agradecido de dho. jefe por el beneficio que se le ha hecho,
 obligandose á poner en avmento con su ynteligencia las cortas, aguas qe. se
 le han donado para que puedan susistir sus revaños á lo que queda obligado
 entregando todo para aprobacion de V. dara cumplimiento á los derechos
 qe. se le ympongan. Por tanto hago remision á la superioridad para qe.
 vista por V. determine lo que estime por justo.

San Fernando, doce de sepre. de mil ochocientos diez y nueve años.
 De qe. soy feé, con los dos de mi asistencia.

JOSÉ GARCIA DE LA MORA. [RÚBRICA.]

De assa.:

JOSÉ ANDRES CALLER. [RÚBRICA.]

De asia.:

FRANCO. GALIZ. [RÚBRICA.]

[Roto.] de los limites por [Roto].

[RÚBRICA.]

[Roto.] ELGARES.

19 UNITED STATES OF AMERICA,

Territory of New Mexico, county of Santa Fe:

Clarence Key, being first duly sworn, upon his oath, says: That he is fifty-nine years of age and is a resident of this city of Santa Fe, in the Territory of New Mexico; that he has been acquainted with the Spanish language since he was fifteen years of age; that he has resided in the Republics of Peru and Mexico about eight years, and in the city of Havana, Island of Cuba, for five years; was French and Spanish translator in the General Land Office for about four years, and afterwards translator in the office of the United States surveyor-general of New Mexico for about six months, and that since 1879 up to the present time he has devoted himself exclusively to the study and translation of Spanish land law, and the translation of public documents executed in the Republic of Mexico and in the Territory of New

Mexico, in the Spanish language, relating to land titles; that he is thoroughly conversant with the Spanish language and its technical terms and expressions used in connection with land titles and grants in the Territory of New Mexico and in the Republic of Mexico; that he has made a careful translation of the grant papers in the cause of Eloisa L. de Bergere et al. vs. The United States, and that the foregoing is such translation and is a true and correct translation of said original grant papers on file in the office of the United States surveyor-general of the Territory of New Mexico, and which were introduced in evidence in the said cause before mentioned on the trial of said cause in the United States Court of Private Land Claims.

[SEAL.]

CLARENCE KEY.

TERRITORY OF NEW MEXICO,

County of Santa Fe:

Sworn to and subscribed before me this 26th day of December, 1894.

JAMES H. REEDER,

Ck C't Pr'r L'd Claims.

By IRENEO L. CHAVES,

D'pty.

20 And be it further remembered that afterwards, to wit, on the ninth day of January, A. D. 1893, a map was filed by plaintiffs in the said cause, which said map is in the words and figures following to wit:

(Map of the grant.)

22 And be it further remembered that afterwards, to wit, on the 14th day of January, A. D. 1893, a summons was issued in the said cause from the office of said clerk, which said summons is in the words and figures following, to wit:

23 In the U. S. Court of Private Land Claims.

UNITED STATES OF AMERICA,

District of New Mexico, ss:

ELOISA L. BERGERE ET AL., PLAINTIFF,	}
<i>versus</i>	
THE UNITED STATES OF AMERICA, DEFENDANT.	}

Petition filed in the clerk's office, this day of , A. D. 189 .

The President of the United States of America, to Franklin H. Story, attorney for the United States before the Court of Private Land Claims, greeting :

You are hereby notified that an action has been brought in said court by Eloisa L. Bergere et al., plaintiff, against you as defendant, under the provisions of the act of the Congress of the United States, entitled "An act to establish a court of private land claims, and to provide for the settlement of private land claims in certain States and Territories,"

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

approved March 3d, 1891, and that a copy of the petition of said plaintiff is herewith attached and served upon you, and that you are required to appear and plead, demur or answer to the petition filed in said action, in said court within thirty days from the date of service of this summons upon you; and if you fail to do so the said plaintiff will take default according to the provisions of the aforesaid act.

Witness the Honorable Joseph R. Reed, chief justice of the Court of Private Land Claims, and the seal of the said court, at the city of Santa Fe, in said district, this 14th day of January, A. D. 1892, and of the Independence of the United States the 117 year.

[SEAL.]

JAMES H. REEDER,
Clerk.

By IRENEO L. CHAVES,
Deputy Clerk.

24 And be it further remembered tha' afterwards, to wit, on the 14th day of January, A. D. 1893, a summons was issued in the said cause in the office of said clerk, which said summons is in the words and figures following, to wit :

25 In the U. S. Court of Private Land Claims.

UNITED STATES OF AMERICA,
District of New Mexico, ss:

ELOISA L. BERGERE ET AL., PLAINTIFF, }
versus
THE UNITED STATES, DEFENDANT. }

Petition filed in the clerk's office this day of , A. D. 189 .

The President of the United States of America to Joel P. Whitney, greeting:

You, and each of you, are hereby notified that an action has been brought in said court by Eloisa L. Bergere et al., plaintiff, against you as defendant, under the provisions of the act of the Congress of the United States entitled "An act to establish a court of private land claims and to provide for the settlement of private land claims in certain States and Territories," approved March 3d, 1891, and that a copy of the petition of said plaintiff is herewith attached and served upon you, and that you are required to appear and plead, demur, or answer to the petition filed in said action in said court within thirty days from the date of service of this summons upon you; and if you fail so to do the said plaintiff will take default according to the provisions of the aforesaid act.

Witness the Honorable Joseph R. Reed, chief justice of the Court of Private Land Claims, and the seal of the said court, at the city of Santa Fe, in said district, this 14th day of January, A. D. 1892, and of the independence of the United States the 117th year.

JAMES H. REEDER,
Clerk.

By IRENEO L. CHAVES,
Deputy Clerk.

26 And be it further remembered that afterwards, to wit, on the 14th day of January, A. D. 1893, a summons was issued in the said cause from *the* office of the said clerk, which said summons is in the words and figures following, to wit:

27 In the U. S. Court of Private Land Claims.

UNITED STATES OF AMERICA,
District of New Mexico, ss:

ELOISA L. BERGERE ET AL., PLAINTIFF, }
versus
THE UNITED STATES ET AL., DEFENDANT. }

Petition filed in the clerk's office this 9th day of January, A. D. 1893.

The President of the United States of America to Matt. G. Reynolds, esq., U. S. atty. for the Court of Private Land Claims, greeting:

You, and each of you, are hereby notified that an action has been brought in said court by Eloisa L. Bergere et al., plaintiff, against you as defendant, under the provisions of the act of the Congress of the United States entitled "An act to establish a Court of Private Land Claims and to provide for the settlement of private land claims in certain States and Territories," approved March 3d, 1891, and that a copy of the petition of said plaintiff is herewith attached and served upon you, and that you are required to appear and plead, demur, or answer to the petition filed in said action in said court within thirty days from the date of service of this summons upon you; and if you fail so to do the said plaintiff will take default according to the provisions of the aforesaid act.

Witness the Honorable Joseph R. Reed, chief justice of the Court of Private Land Claims, and the seal of the said court, at the city of Santa Fe, in said district, this 14th day of January, A. D. 1893, and of the independence of the United States the year.

[SEAL.]

JAMES H. REEDER,

Clerk.

By IRENEO L. CHAVES,
Deputy Clerk.

28 And be it further remembered that afterwards, to wit, on the 25th day of January, A. D. 1893, a return of summons was filed in the said cause in the office of said clerk, which said return of summons is in the words and figures following, to wit:

29 *Proof of service.*

UNITED STATES OF AMERICA,
District of Mass., ss:

BOSTON, January 25th, A. D. 1893.

I hereby certify that I received the within writ on the 25th day of January, A. D. 1893, and that I have personally served the same upon the said defendant's attorney, William J. Downing, who is authorized to

accept service of the within precept, by delivering to him at Boston, in said district, personally, a true copy of the within writ, and copy of transcript at the time and place as follows: As to Joel P. Whitney, 70 Kelly st., at Boston, county of Suffolk, on the 25th day of January, A. D. 1893.

WILLIAM W. DOHERTY,
U. S. Marshal, Mass. Dist.
Per F. D. GALLUPE, *Deputy.*

BOSTON, Jan. 25, 1893.

I, the undersigned, hereby certify that I am authorized by the above-named Joel P. Whitney to accept service of this writ.

WILLIAM J. DOWNING.

This writ, therefore, returned , as the law directs, this 25th day of January, A. D. 1893.

30 And be it remembered that afterwards, to wit, on the 25th day of January, A. D. 1893, a return of summons was filed in the said cause in the office of said clerk, which said return of summons is in the words and figures following, to wit:

31 *Proof of service.*

UNITED STATES OF AMERICA,
District of New Mexico, ss:

BOSTON, January 25th, A. D. 1895.

I hereby certify that I received the within writ on the 25th day of January, A. D. 1893, and that I have personally served the same upon the said defendant's attorney, William J. Downing, who is authorized to accept service of the within precept, by delivering to him at Boston, in said district, personally, a true copy of the within writ and copy of transcript, at the time and place as follows: As to Franklin H. Story, at Boston, county of Suffolk, on the 25th day of January, A. D. 1893.

WILLIAM W. DOHERTY,
U. S. Marshal, Mass. Dist.
Per F. D. GALLUPE, *Deputy.*

BOSTON, Jan. 25th, 1893.

I, the undersigned, hereby certify that I am authorized by the above-named Franklin H. Story to accept service of this writ.

WILLIAM J. DOWNING.

This writ, therefore, returned , as the law directs, this 25th day of January, A. D. 1893.

32 And be it further remembered that afterwards, to wit, on the 2d day of February, A. D. 1893, a return of summons was filed in

the said cause in the office of said clerk, which said return of summons is in the words and figures following, to wit:

33

Proof of service.

UNITED STATES OF AMERICA,
District of New Mexico, ss:

SANTA FE, Feb. 2, A. D. 1893.

I hereby certify that I received the within writ on the 14 day of January, A. D. 1893, and that I have personally served the same upon the said defendant, Matt. G. Reynolds, U. S. attorney for the Court of Private Land Claims, by delivering to him personally a true copy of the within writ, at the time and place as follows: As to _____ at _____, County of _____ on the _____ day of _____, A. D. 189 _____. As to _____.

I hereby acknowledge service of summons in the within cause this Jan'y 23, 1893.

MATT. G. REYNOLDS,
U. S. Atty.

This writ therefore returned by me as the law directs this 2nd day of February, A. D. 1893.

TRINIDAD ROMERO,
Marshal.

By SERAPIO ROMERO,
Deputy Marshal.

Marshal's fees:

Service 1 defendants, at \$4	\$4 ⁰⁰ ₁₀₀
Mileage, miles, at 6c. going only.....	
Total	\$4.00

34 And be it further remembered that afterwards, to wit, on the twenty-third day of June, A. D. 1893, the answer of the United States was filed in the said cause in the office of the said clerk, which said answer is in the words and figures following, to wit:

35 In the Court of Private Land Claims, Santa Fe district, July term, 1893.

UNITED STATES OF AMERICA, *ss:*

ELOISA L. BERGERE ET AL. }
vs. } No. 58.
THE UNITED STATES. }

Answer.

Comes now the United States, by Matt. G. Reynolds, its attorney, and for its separate answer to plaintiff's petition filed in said cause, and answering to so much thereof and such parts thereof as it is necessary, says:

It has no knowledge or information sufficient to enable it to form a belief as to whether or not in the year 1819 the governor of the province of New Mexico granted to one Bartolomé Baca any land situate now in the county of Valencia, Territory of New Mexico, or not.

Nor as to whether the land described in plaintiffs' petition was ever attempted to be granted by the governor of said Territory in the year 1819 or not, but says that if said attempt was made it was without warrant or authority of law, and that the same was never severed from the public domain by anyone authorized thereto.

Further answering it says if anyone pretending to act under and by virtue of the authority of the governor of New Mexico attempted to put said Baca, or anyone for him, into the possession of the property sued for in this case he did so without authority and in excess of his powers, if any he had, and in violation of and in fraud of the commission in that behalf, if any he had.

Further answering it says that if said Baca ever had possession of said property, claiming it under and by virtue of said alleged grant, that he abandoned the same and the same remained vacant and abandoned for many years prior to the acquisition of this Territory by the United States, and that at the time the United States acquired sovereignty over this Territory said property was vacant, uninhabited, uncultivated, unclaimed, and abandoned, and passed to the United States as public domain.

36 As to whether or not these plaintiffs have or possess what are alleged and claimed to be the original title papers it has no knowledge or information and calls for strict proof. That at the time of acquiring this country it was not advised by the records or archives thereof that any individual had any right to a claim in, to, or over said property.

Further answering it says that *it says that* if, as alleged in said petition, one Melgares attempted to grant said land to said Baca, the same was without warrant or authority of law and void, and it says it has no knowledge or information sufficient to enable it to form a belief as to whether, at said alleged time, Melgares was governor of said province or was clothed with the authority to dispose of the public domain of the Republic of Mexico. It calls for strict proof in that behalf.

It denies that the conditions imposed by law as conditions precedent to acquiring the legal title to the property within this province, and also the conditions imposed by the terms of said alleged grant, have ever been complied with and calls for strict proof of the same.

Further answering it says that there is now asserted in this court a claim for the Neri Antonio Montoya or Ojo de en Medio grant in the name of J. Francisco Chaves against the United States, which it is informed and believes and so charges the fact to be itself conflicted with the claim made by these plaintiffs, and therefore interested in defeating the same, but it does not admit that said claim is itself of any force or effect as against the United States.

Further answering it says that said claim is not one which, under the laws of nations, the treaty of cession or the principles of equity by which this court will be governed in determining the same it is bound to respect or recognize.

All allegations not hereinbefore answered are denied, and it is demanded that plaintiffs be put to their proof of all the allegations in said petition; as provided they shall be by the act of Congress approved March 3, 1891, under which this court assumes jurisdiction of this controversy, and that they shall be put to their proof as to their pretended interest in said alleged grant.

Now, having fully answered, it prays the court that a decree may be entered rejecting the claim for said alleged grant and dismissing the petition, and for such other orders as to the court may seem meet and proper and which it may be authorized to make in the premises.

Respectfully submitted.

MATT. G. REYNOLDS,
U. S. Attorney.

37 And be it remembered that afterwards, to wit, on the 26th day of July, A. D. 1894, an abstract of title was filed by plaintiffs in the said cause in the office of said clerk, which said abstract of title is in the words and figures following, to wit:

38 Abstract of title of the Bartolome Baca grant.

ELOISE L. BERGERE ET AL. }
vs. } No. 58.
THE UNITED STATES. }

1. Grant papers, Melgares, Spanish governor, to Bartolome Baca, of dates February 4th, 1819; July 2nd, 1819; September 12, 1819.
2. Bartolome Baca died intestate, leaving to survive him Manuela, Rita, Ana Maria, Lugarda.
3. Manuela married Miguel Sena; Rita married Gregorio Sanchez; Ana Maria married Juan Chavez; Lugarda married Jose Luna. All of the above heirs either deeded their interest as hereinafter set forth or died intestate, leaving to survive them the children, all of whose deeds are hereinafter set out.

4.

	Date.	Recorded.
1. Placido Robles to Miguel A. Otero.....	July 14, 1879.....	Book A—4, p. 243, in Valencia Co.
2. Jose Maria Sanchez y Baca to Manuel Antonio Otero.	July 15th, 1878.....	Book A—4, p. 207, in Valencia Co.
3. Emilia Otero de Henriques and Charles H. Armijo to A. M. Bergere and wife and children.	March 14, 1893.....	Book B—2, p. 216, in Valencia Co.
4. Juan Chavez y Baca and Julian Castillo de Chavez to M. A. Otero.	July 22, 1878.....	Book A—4, p. 205, in Valencia Co.
5. Placida Chavez y Baca to M. A. Otero..	June 29, 1878.....	Book A—4, p. 211, in Valencia Co.
6. Jose Luna y Lugarda Baca de Luna to M. A. Otero.	June 10, 1878.....	Book A—4, p. 213, in Valencia Co.
39. 7. Bartolo Chavez y Baca y Maria Antia, de Baca to M. A. Otero.	May 24, 1878.....	Book A—4, p. 206, in Valencia Co.
8. Santiago Sanchez y Baca and Maria Perez de Sanchez to M. A. Otero.	June 27, 1878.....	Book A—4, p. 210, in Valencia Co.
9. Mauricio Sanchez y Baca to M. A. Otero.	June 27, 1878.....	Book A—4, p. 209, in Valencia Co.
10. Candelaria Baca to Miguel A. Otero.....	August 4, 1879....	
11. Julian Sanchez y Teresa Sanchez y Sanchez to M. A. Otero.	July 16, 1878.....	
12. Jesus Ma. Sena y Baca y Agapita Ortiz to M. A. Otero.	July 17, 1878.....	Book A—4, p. 215, in Valencia Co.
13. Mucio Chavez and Carmel Vigil de Chavez to M. A. Otero.	Feb. 14, 1869.....	

14. The petitioners in this suit are the surviving heirs and the grantees of the surviving heirs of Miguel A. and Manuel A. Otero.

40 And be it further remembered that afterwards, to wit, on the 27th day of August A. D. 1894, the same being the 14th day of the August term, 1894, the following further proceedings were had in the said cause, to wit:

ELOISA L. BERGERE ET AL., PLAINTIFFS, } Bartolome Baca grant.
vs. } No. 58.
THE UNITED STATES ET AL., DEFENDANT'. }

The above-entitled cause having come on to be heard and the parties herein having announced themselves ready for trial, there appeared Matt. G. Reynolds, esq., U. S. attorney, for and on behalf of the said defendant, the United States, and J. D. O'Bryan, H. J. O'Bryan, J. W. Vroom, and T. B. Catron, esqs., appearing for the petitioners. The trial of the cause was proceeded with on the pleadings presented. Oral and documentary proof was introduced.

By leave of the court first had and obtained, the Government withdrew its answer and filed an amended answer in the cause. Upon motion of Mr. Vroom, of counsel for plaintiffs, the petitioners herein are hereby allowed to amend their original petition.

41 And be it further remembered that afterwards, to wit, on the 28th day of August A. D. 1894, the same being the 15th day of the August term, 1894, the following further proceedings were had in the said cause, to wit:

ELOISA L. BERGERE ET AL., PLAINTIFFS, } Bartolome Baca grant.
vs. } No. 58.
THE UNITED STATES ET AL., DEFENDANT'. }

The court resumed the hearing of the above-entitled cause, all the attorneys in the case being present. Additional oral and documentary proof was introduced; and the trial of the said cause not being concluded, the court adjourned until to-morrow at 10 o'clock a. m.

42 And be it further remembered that afterwards, to wit, on the 29th day of August, A. D. 1894 the same being the 16th day of the August term, 1894, the following further proceedings were had in the said cause, to wit:

ELOISA L. BERGERE ET AL., PLAINTIFFS, } Bartolome Baca grant.
vs. } No. 58.
THE UNITED STATES ET AL., DEFENDANT'. }

All the attorneys in the above-entitled cause being present, the trial of the cause, and the argument in the cause, was postponed until some future day of the court.

43 And be it further remembered that afterwards, to wit, on the 30th day of August, A. D. 1894, the same being the 17th day of

the August term, 1894, the following further proceedings were had in the said cause, to wit :

ELOISA L. BERGERE ET AL., PLAINTIFFS,
 vs.
 THE UNITED STATES ET AL., DEFENDANT. } Bartolome Baca grant.
 No. 58.

The above-entitled cause having been called for argument and the attorneys in the cause being present, the said cause was argued by Mr. O'Bryan for the plaintiffs, and by Matt. G. Reynolds, esq., U. S. attorney, for the said defendant, the United States; Mr. Catron being granted leave by the court until some future day of the court to make his argument in the cause,

44 And be it further remembered, that afterwards, to wit, on the 3rd day of September, A. D. 1894, the same being the 20th day of the August term, 1894, the following further proceedings were had in the said cause, to wit :

ELOISA L. BERGERE ET AL., PLAINTIFFS,
 vs.
 THE UNITED STATES ET AL., DEFENDANT. } Bartolome Baca grant.
 No. 58.

The above-entitled cause coming on to be further heard, all the attorneys in the case being present, T. B. Catron, esq., began and concluded his argument for and on behalf of the petitioners herein, after which the said cause was submitted, and the court, not being sufficiently advised in the premises, took the said cause under advisement.

45 The following is the oral and documentary proof introduced upon the trial of the cause :

46 In the Court of Private Land Claims, Santa Fe district, August term, 1894.

UNITED STATES OF AMERICA, *ss*:

ELOISA L. BERGERE, ET AL., CLAIMING "BARTOLOME
 Baca grant," plaintiff,
 versus
 THE UNITED STATES OF AMERICA, DEFENDANT. } No. 58.

Transcript of the trial.

On August 27th, 1894, at the hour of two o'clock p. m. the above-entitled cause was called for trial, and the following proceedings were had therein :

Appearances : J. D. O'Brien, esq., H. J. O'Brien, esq., Jas. W. Vroom, esq., and T. B. Catron, esq., for the plaintiffs ; Matt. G. Reynolds, esq., U. S. attorney, and Summers Burkhart, esq., assistant U. S. attorney, for the defendant.

Mr. REYNOLDS. I desire the record to show the withdrawal of the original and formal answer and the filing of an amended answer.

Mr. O'BRIEN. It does not appear to have been filed as an amended answer.

Mr. REYNOLDS. It has been on file for a year.

47 BARTOLOME CHAVES Y BACA, of lawful age, produced to testify on the part of the plaintiff, being duly sworn upon his oath, testified as follows, in Spanish :

Direct examination by Mr. O'BRIEN :

Q. What is your name, age, and residence ?

A. My name is Bartolome Chaves y Baca ; residence, Belen, New Mexico ; sixty years of age.

Q. What relation, if any *any*, are you to Bartolome Baca ?

A. My grandfather.

Q. What relation was your father or mother to him ?

A. My mother was the daughter of Don Bartolome Baca.

Q. Did you ever know Bartolome Baca in his lifetime ?

A. No.

Q. Do you know in what year he became deceased ?

A. Yes, sir.

Q. Tell him to answer it.

A. In the year 1834.

Q. In what year were you born ?

A. In the year 1834, after the death of my grandfather, Don Bartolome Baca.

Q. Do you know where your parents were living at the time of your birth ?

A. Yes, sir.

Q. Where ?

A. In San Fernando.

Q. At that time do you know the house Bartolome Baca was living in ?

A. Yes, sir ; I am now living in the house in which Don Bartolome Baca lived.

Q. Well, was it contiguous to, near to, or distant from the house your father and mother lived in ?

A. About one hundred yards ; no more.

Q. Do you know how many sons Bartolome Baca had ?

A. Yes, sir.

Q. Did they survive him or die before him ?

A. One, Manuel Baca, died before ; Juan Baca, I do not know whether he died before or after ; he went to California.

Q. How long before the death of your grandfather did his one son die ?

48 A. I think that Manuel Baca died in the same year in which Don Bartolome Baca died.

Q. What did your father do in relation to the estate, if anything, or what connection had he with the estate of Bartolome Baca ?

A. He was administrator of the estate of Don Bartolome Baca.

Q. At that time one of the Baca boys had died and the other had gone to California, did I understand you to say ?

A. Yes, sir ; Juan Baca went to California.

Q. Do you know of any papers belonging to Bartolome Baca that came into the possession of your father, acting as administrator of your grandfather's estate ?

A. The papers of Don Bartolome Baca were in the possession of my father.

Q. How long ago did your father die?

A. I do not remember the year; it was about fifteen years ago.

Q. Well, how many children did he leave?

A. Three.

Q. Well, what became of them?

A. One died, two of us are living.

Q. Are the two that are living boys or girls?

A. Those who are living are males.

Q. Were you the oldest or youngest?

A. The younger of the two.

Q. Where were you living at the time of your father's death, you and your brother?

A. I am living near Tome.

Q. In whose house do you live?

A. I am living in my father's house and my mother's house.

Q. When did your mother die?

A. In the same year in which my father died; I do not remember the year.

Q. Were you all living together in the same house?

A. I and my father and my mother; yes, sir.

Q. What did you have to do with your father's and mother's estate, if anything?

A. I had it in my charge, because my father was very old and he lived with me.

Q. But subsequent to your father's death, what had you to do with the estate on your mother's death?

A. I then divided it among the children.

49 Q. By whose authority did you divide it? . How did you come to act in the matter?

A. By no authority; I just divided it.

Q. Was you administrator of the estate, or not?

A. Yes, sir; I was.

Q. After his death, did his goods that remained, or this box of papers that belonged to your grandfather—what became of that?

A. I had it.

Q. Did you know its contents at the time you had it?

A. I did not know until later, when I was looking for some papers of my father's. I then found out what was in it.

Q. Upon what occasion was it you came to examine this box of your father, and what did you find there?

A. I was looking for some papers what belonged to my father; I found a part of the grant of a tract to Bartolome Baca.

Q. What did you do with it?

A. Then I took it to Don Manuel Antonio Otero.

Q. What, in consequence of that, did you and Otero do, if anything?

A. Then Don Manuel Otero said to me: "Let us search for the other part, and I will buy it from you and the other heirs."

Q. Well, did he make a search for the other part?

A. Then I searched and we found the other part; but there was one little piece missing, which we never found.

Q. Will you look at that paper [hands witness paper] and see whether you recognize that paper?

A. (Witness examines paper.) Yes, sir; this is the same.

Q. Is that the same paper now that was afterwards brought in the surveyor-general's office, do you know?

A. That is the same.

Q. Do you know how many children Bartolome Baca, the original grantee, had?

A. Yes, sir.

Q. How many, and give their names, boys and girls?

A. Juan Baca, Manuel Baca, Rita Baca, Manuela Baca, Maria Baca, Lugarda Baca and—

Q. How many in all?

A. Seven.

Q. After the death of your grandfather, do you know where they lived?

A. Yes, sir.

50 Q. Where, as near as you can remember?

A. At Torreon.

Q. Where is Torreon, with reference to this identical grant?

A. It is within the limits of the grant.

Q. How many of these children lived there, and for what length of time, do you know?

A. I do not remember exactly; Juan Baca and Manuel Baca lived at Torreon, and the others lived—some lived at San Fernando and in other places.

Q. Did your father and mother ever live upon the grant?

A. My father was.

Q. From what time to what time?

A. From the year 1857 until 1863; we lived at Torreon; I and my father and my mother also.

Q. What business di' our father carry on?

A. Farmer.

Q. Did he have any herds or stock?

A. He had large numbers of stock.

Q. Where did he keep them?

A. On the estancia.

Q. Where is the estancia, with reference to this grant?

A. The estancia is within the grant.

Q. How many years, if years, did your father keep stock there?

A. He had them there from the year 1857 until 1863.

Q. How came you to go away with your stock?

A. On account of the severe drouth that year.

Q. Now, prior to the time that your father came there, you said that some of his, Baca's, other children lived at Torreon; did they have any stock of any kind or description?

A. The grandchildren of Manuel lived at Torreon.

Q. Did Juan and Manuel, when they lived on the grant, ever have cattle upon the grant; and if so, where?

Mr. REYNOLDS. I object to the form of the question, as it is leading.

No ruling.

No answer.

Q. Had your uncles that lived at Torreon any cattle; and if so, where were they?

A. They had them at the estancia.

Q. How long did they have cattle there, from what date to what date?

51 A. I do not know; I was not born when they lived there.

Q. During your boyhood, or at any time of your life prior to '57, do you know of their being there or not?

MR. REYNOLDS. I object, as it is immaterial and because the occupation was subsequent to the treaty of 1848.

THE CHIEF JUSTICE (Associate Justice Fuller). The answer to this question would not necessarily cover that period.

A. I understood that there had been stock there of Don Bartolome Baca.

Q. Do you know whether they had any of their own there, independent of that of their grandfather?

A. I believe they had, because they were living there at Torreon.

Q. At the time you first came to Torreone, how many families were living there?

A. Number lived there.

Q. How many, about, as near as you can give?

A. I came about the year 1857, and there were then about thirty families.

Q. Had you ever been there before you went there to live with your father and mother?

A. Yes; I had been there.

Q. How often before?

A. I had been there a number of times; many times I was there.

Q. With whom did you go?

A. I went there with a servant of my father; going by Palmyre we went to the Torreone.

Q. Were you ever there with your father before you went to live there permanently?

A. Yes, sir.

Q. Did you ever hear him say anything about his claims, or your mother being claimant of the grant; and if so, what?

MR. REYNOLDS. I object, as it is incompetent as to the declarations of parties made in their own interest, and this paper will show whether Bartolome Baca was a claimant or not; the paper will show for itself.

Judge FULLER. Answer the question subject to your objection.

A. He said there was a grant belonging to the heirs of Don Bartolome Baca, but that he did not know where the grant was.

52 Q. What do you mean; do you mean where the grant was, or the evidence—the paper evidence of it—or of the land?

A. Of the land.

Q. Did you know the other people that lived there at the time and afterwards, on the alleged grant?

A. Yes; some of my cousins was living there at the time; some in Tajiique, and others in Torreon.

Q. Did you know any other people not related to you that lived there?

A. Yes, sir.

Q. Now, among all these people that lived there, what was the general reputation of the ownership of this grant?

Mr. REYNOLDS. I object, as it is incompetent and immaterial—can't prove ownership that way.

Justice FULLER. We will take it subject to the objection.

A. That the grant of estancia belonged to Don Bartolome Baca.

Q. What did these people say, if anything, as to the boundaries, if anything?

Mr. REYNOLDS. I object to their proving the boundaries in this way; their title papers which they have produced here and set out in their petition show what the boundaries are; they have been offered in evidence here.

Justice FULLER. If the boundaries are fixed by the grant itself, parol evidence can not be given, except as to objects that are designated; we will allow the testimony with reference to objects, or their existence or location.

Mr. REYNOLDS. I object to the testimony of this witness or any other undertaking to define what the boundaries are in the act of possession.

A. That the boundaries of the land belonging to Don Bartolome Baca there were the Crow Springs, Ojo del Cuerro, towards the Ojo del Chico, thence to the Cerro del Pedernal, from the Cerro del Pedernal to the Ojo del Cevilleta, from the Ojo del Cevilleta to the summit of the mountain (montana), thence along the line of the summit of the mountain to 53 opposite the Ojo del Cuervo.

Q. Did your father ever say anything to you about the boundaries or not?

Mr. REYNOLDS. Object to it, as it is hearsay evidence.

The CHIEF JUSTICE. Proceed subject to the objection.

A. Yes, sir; he said that those were the boundaries, those mentioned there.

Q. When did your father say it; was it any time you and he were together on the grant or not?

Mr. REYNOLDS. Object to the question, as the witness is not one that needs to be led.

The CHIEF JUSTICE. He may answer the question.

A. It was not on the grant; it was when we were living at Tome.

Q. How far is Tome from Torreon?

A. About 30 or 35 miles.

Q. Have you ever seen a printed or drawn map of the boundaries of this grant; I mean, examined it?

A. No; I have said that I had seen a map of that; before seeing the map I had been over the boundaries of the land.

Q. Well, did you examine the map?

A. I did not examine it well; I saw it cursorily.

Q. Will you make a map on that paper at the first-menti'ned place; will you begin at El Torreon and go towards the east, marking at each point that you have mentioned? In what point of the compass is Torreon in respect to the grant?

A. On the east.

Q. Well, go ahead and draw a map from the description you have given of the boundaries.

A. (Witness drawn some lines on paper.)

Q. Now, if you will connect the points; have you got all the points down that you have mentioned? If you will connect those together and enclose them in lines, please.

A. Yes, sir.

Q. Write the names of the different places you have mentioned.

A. (Witness writes.)

54 Q. Well, within this is the Estancia Springs; what is the estancia; what do you mean by the word?

A. The principal rancho, where Don Bartolome Baca had his place.

Q. What is Estancia besides being a ranch?

A. Cattle ranch, a stock ranch.

Q. Why was it called Estancia?

A. I do not know; there is another Estancia.

Q. How far is it from Estancia to the Pedernal; have you ever gone from Estancia to the Pedernal?

A. Yes, sir.

Q. How long did it take you to go there?

A. Half a day or a little more.

Q. Were you driving or how?

A. I went with wagons.

Q. Well, what were the animals that were drawing the wagon?

A. Oxén.

Q. It took you a day to get there?

A. Somewhat more.

Q. Which way did the waters flow from the Estancia Springs—towards the Pedernal or towards the other mountain?

A. Towards the Pedernal.

Q. Is there any water flowing westwards from the Pedernal Mountain towards the Estancia Springs?

A. From Estancia, no.

Q. Well, now, when you first saw Torrecone, you say there were about thirty families living there then?

A. I went there a good many times after Don Bartolome Baca died, and there were a good many families there.

Q. Did you notice what amount of acequias for the land they had under cultivation?

A. There was one very long ditch there.

Q. How long do you suppose?

A. About four miles.

Q. Was that all the ditch, or were there laterals?

A. There were two; this ditch was come from within the cañon—the large one.

Q. And where did the other one come from?

A. The two, for there were two, run from the Torrecone, where there was a spring; one run on one side of the arroyo, and the other on the other side.

55 Q. Well, was this spring in the town proper?

A. Within the settlement.

Q. Was there any land under cultivation there?

A. They irrigated gardens with it and little pieces of land; water was not much, not abundant.

Q. Did they have any fields or raise corn or anything?

A. Yes, they had.

Q. Where were those fields?

A. They were on both sides of the old ditch, the large one.

Q. Were these fields temporals, or were they irrigated from the ditch?

A. They were irrigated, but when there was no water they were temporals.

Q. Are you able to judge how many acres there were under cultivation?

A. No, sir, I can not.

Q. How much was the land that was cultivated and under cultivation?

A. I do not know, of acres.

Q. How many varas long and how many varas wide, if you does not know how many acres?

A. About one mile in width and a little less in length.

Q. Did these acequias and cultivated lands look like new, or did they have the appearance of being old?

Mr. REYNOLDS. I object to the form of the question.

The CHIEF JUSTICE. He may answer the question.

A. They were old ditches.

Q. When was the first time you ever went to Torreone, if you recollect?

A. I can not recollect, I was a very small boy at the time.

Q. Well, do you recollect the appearance of the town of Torreone, if there was a town there, the first time you went there as a boy?

A. Yes, sir.

Q. Tell us what it looked like.

A. It was a little settlement of about thirty families when I went there.

Q. And were these acequias and cultivated fields there at that time?

A. Yes, sir.

56 Q. What is the Pedernal?

A. It is a cerro—a hill.

Q. Is there any distinguishing marks about it, except it being a hill; any peculiarities?

A. It is a high cerro; there are other smaller ones.

Q. At what point of the compass is it in relation to the grant?

A. It is east.

Q. The Ojo del Chico, what is that?

A. That is a tree, or shrub, which is called chico, and for that reason they call it Chico Springs.

Q. Is there water there besides?

A. Yes, sir.

Q. What way do these waters come; north or south?

A. A little north, very much to the east, and very much to the south.

Q. What boundary did you say they were on, these Chico Springs?

A. The boundary on the side of the south side.

Q. On the west?

A. The Cuervo.

Q. What is it; what kind of a mountain; does it look like a hill, or what is it?

A. It is a spring. Possibly there was a tree there and had crows' nests in it, and for that reason they called it Crow Springs.

Q. What is the eibollo?

A. It is called the cibollo because formerly there was buffalo there.

Q. What is it?

A. It is a spring.

Q. Is there also a mountain Cibollo there?

A. There are trees there—woods.

Q. What is there; what is the nature of the objects, I mean?

A. Woods.

Q. Enumerate the kinds of woods; what is there with reference to the spring, cibollo?

A. There are woods on both sides, one side and the other.

Q. Do they surround the spring on all sides, or only on two sides?

A. There are woods on all sides of it.

Q. Well, now, are there any other objects of the same names as these five you have given, in that neighborhood, of the same name; are there any other objects?

A. No, sir; there are not.

57 Q. Are these names that you have given there, are these the names that are generally applied to these in that neighborhood, or not?

A. Yes, sir.

Q. Well, now, where is the sierra, on which side of the grant, as you have drawn it there is the sierra?

A. On the west side.

Q. Now, then, where is the town of San Fernando with reference to this sierra?

A. On the west of the mountain.

Q. What river is on the west of the mountain?

A. The river Del Norte, Rio Grande.

Q. Where is San Fernando?

A. Near the place of the Canada del Berrendo.

Q. With reference to the sierra of this grant you have mentioned?

A. Westward.

Q. How far is it from the top of the sierra, hill, to the town of San Fernando?

A. I do not know; there may be some twenty miles, more or less.

Q. Near San Fernando is where Bartolome Baca lives, is it not?

A. Yes.

Q. Which way did you go from San Fernando over to the grant, and how long does it take you to go there?

A. On a good horse one could go there in half a day.

Q. Did you know Jesus Saavedra?

A. Yes; I know him.

Q. Is he dead or alive?

A. He is dead.

Q. Did you know Miguel Lucero?

A. Yes, sir.

Q. Dead or alive?

A. He is dead.

Q. Roman Torres?

A. Yes, sir.

Q. Is he dead or alive?

- A. He is dead.
Q. Is Jesus Saavedra the same man as Y. Romero?
A. Only one man.
Q. Clemento Chaves, did you know him?
A. Yes, sir.
Q. Is he alive or dead?
A. He is dead.
Q. Matias Sanchez?
A. Yes; I knew him; he is dead.
Q. Do you know whether the men you have mentioned testified before the surveyor-general in this case with you?

58 A. Yes, sir; they were.

Q. Did you at any time make a deed to your interest in this grant to anybody?

- A. Yes; to Don Manuel Antonio Otero.
Q. What date was that; do you remember?
A. I do not remember, but it was at the time when we found the grant.
Q. Is Manuel Otero dead or alive?
A. He is dead.
Q. When did he die; how long ago?
A. I do not remember.
Q. About?
A. About six or eight years; a little more or less.
Q. Take the witness.

Cross-examination by Mr. REYNOLDS:

Q. Give me the names of the sons of Bartolome Baca—you say you have known Jesus Saavedra?

A. Yes.

Q. Did you ever have any conversation with him in re'rerence to the boundaries of this grant?

A. Yes, sir.

Q. What did he say in relation to them?

Mr. O'BRIEN. I object, as if it is leading.

The CHIEF JUSTICE. We will take it subject to the objection.

Q. What did he say?

A. He said that he was a servant of Bartolome Baca, and that he was with him on the estancia, and that was the land of Don Bartolome Baca.

Q. What did he say was the land; what description?

A. He mentioned the boundaries to me; he said it was Cuervo, Ojo del Chico, and bounded by the lands of Pedernal, and he said these were the boundaries; the Ojo del Cibollo, also.

Q. Was there any familiarity or not between you and this man; and if so, state what were the reasons for it.

A. There was no familiarity; he was Don Bartolome Baca's servant, and I saw him when I went there to Manzano. He had then moved to Manzano, because Don Bartolome Baca had died, and in order to preserve the name of Bartolome they gave it to me.

Q. From whom did you get your name of Bartolome; after whom?

A. From Bartolome Baca.

59 Q. Give me the names of the sons of Bartolome Baca.

A. Juan Baca, Manuel Baca.

Q. No other?

A. There are only two.

Q. Were there not three?

A. No.

Q. Do you know how long this man Jesus Saavedra was in your grandfather's family?

A. I do not know; he was working for Don Bartolome Baca; he was his servant. He might have been with him all his lifetime, or longer; I do not know.

Q. Well, if ever testified that your father ever had a son named Jose Baca, he was mistaken, was he?

A. He was mistaken, because he had only two; if he had they died.

Q. You were born in 1834?

A. In the year 1834, towards the end of the year.

Q. When was the first time you ever went to Torreon?

A. I do not remember; I do not know; it was not before 1857.

Q. How old were you when you went there the first time?

A. 17 or 18 years, I think.

Q. You found about thirty heads of families there, did you?

A. Yes.

Q. You found them grazing their stock about estancia, didn't you?

A. I did not see any stock of theirs there.

Q. Who was living there the first time you were ever there—at Torreon?

A. Don Nerio Montoya and his children, and other persons.

Q. They were not children or grandchildren of Bartolome Baca were they?

A. They were not.

Q. The children or grandchildren of Bartolome Baca returned there after that time, didn't they?

A. When Don Nerio Montoya returned, the two grandchildren of Don Bartolome Baca returned there also.

Q. Lived at Torreon?

A. Two at Torreon, and another at San Fernando.

Q. How many settlements were there on that grant the first time you were ever on it?

A. I do not remember how many.

60 Q. Don't you know any?

A. I know of some.

Q. You testified before the surveyor-general, didn't you?

A. Yes, sir.

Q. Did you testify as to how many settlements were on that grant then?

A. Yes, sir; more than this I do not know.

Q. What are they?

A. There was Torreon, Tajique, Chillili.

Q. Manzana on it then?

A. Manzana is beyond the grant.

Q. Was it known at that time as being beyond the grant?

A. Yes.

Q. Did you so understand it to be outside of the grant then?

- A. Yes, sir.
Q. Who told you so?
A. The inhabitants of Torreon and Manzana.
Q. They were not grant claimants, were they?
A. No, sir.
Q. Was it formerly claimed that the boundaries of the grant took in Manzana?
A. No; all the grant was off Don Bartolome Baca; it was not.
Q. How many people lived at Tajique the first time you ever saw it?
A. About 25 or 30; it was a small settlement.
Q. How many in Chilili?
A. There were a few also; there were not many; I cannot say how many.
Q. Was that in the grant too?
A. Yes, sir.
Q. You understood the boundaries took in Chilili?
A. Yes.
Q. And you understood the north boundary to be what?
A. The Ojo del Cibolo.
Q. Is that north or south of Chilili?
A. North.
Q. When did you sell your interest in this grant?
A. I do not remember the year.
Q. How long after you and Mr. Otero found those papers in the chest?
A. I do not remember exactly what time.
Q. That was the first time you knew you had a grant, wasn't it, when you found the papers?
A. No, I knew it before.
Q. Did you ever hunt for the papers before?
A. No.
61 Q. Who was the administrator of your grandfather's estate?
A. I do not remember; but then I do remember that my father was the administrator of the property of the estate of Bartolome Baca.
Q. Are you certain about that?
A. Yes.
Q. What was the name of the wife of Bartolome Baca?
A. Luz Chaves.
Q. Did she survive him?
A. Yes.
Q. How long after his death did she die?
A. I do not know.
Q. What became of her after he died?
A. She went to live with my mother.
Q. Where?
A. On this side of the mountain towards San Fernando.
Q. It wasn't on the grant, was it?
A. No; no, it was not in San Fernando.
Q. You do not know when she died?
A. No, sir.
Q. One of the sons, Juan Baca, was living in 1829, wasn't he?
A. I believe so.

Q. How far is Tome from this grant?

A. About thirty to thirty-five miles.

Q. Juan Baca was secretary of the ayuntamiento of Tome at one time, wasn't he?

A. I do not know.

Q. Did you ever know of any other Juan Baca down there?

A. No.

Q. You have been down in that country all your life?

A. Yes.

Q. Familiar with the country?

A. Yes.

Q. Familiar with the people?

A. Yes.

Q. The ayuntamientos of Tome had jurisdiction over that country, didn't it, including Torreon and Estancia grants?

MR. O'BRIEN. Object to the question, as it is leading.

THE CHIEF JUSTICE. He may answer it subject to the objection.

A. I do not understand you, nor do I understand what 62 ayuntamiento means.

Q. You knew Nerio Montoya during his lifetime, did you?

A. I knew him a very little while; he was very much older than I.

Q. Did you state a while ago that the first time you went over to Torreon that Nerio Montoya was living there; gave his name a little while ago?

A. Yes, sir; I said so.

Q. You knew him at that time; you saw him afterwards?

A. Yes, sir.

Q. Was he one of the men who told you what the boundaries of this grant were?

A. Yes, sir.

Q. Have you ever read this paper lately?

A. Yes; I read them when I delivered them to Manuel Antonio.

Q. How did you know they were the same papers?

A. Because I know them well; I know the handwriting; I know it all.

Q. You knew the grant to the Bartolome Baca lands, you claim?

A. You, sir.

Q. How did you know it?

A. I know it because I see everything here. I know the handwriting, I see they are of the government.

Q. Have you examined that paper to find out whether it is the same paper since it has been handed you?

A. No.

Q. You identify it simply because it was handed to you by your cousin; therefore you assume it is the proper paper?

MR. O'BRIEN. I object to the question because there is no proof that he has any cousin; as a matter of fact, he has not.

THE CHIEF JUSTICE. He may answer.

A. I presume that it is the same. It is the same that I delivered to Don Manuel Antonio.

Q. Whose signature is to it—to the document?

A. Don Bartolome Baca. Here it is.

Q. Is that Don Bartolome Baca's signature?

A. This is his name.

Q. Is that his signature?

A. What thing is it; is it the handwriting of Don Bartolome Baca, or what thing is it that you want me to understand?

68 Q. The name that you see there. Did Bartolome Baca write it, or somebody else?

A. I do not know who wrote it; it is true in these papers who made this grant.

Q. The only way you identify the paper is because you see the name of Bartolome Baca under it?

A. Because I see it all in the same handwriting that I saw at that time; and this is the grant of Bartolome Baca.

Q. Might it not be another one?

A. No.

Q. Why?

A. Because it is the same.

Q. You have read it?

A. I have read it before.

Q. You have read it to-day?

A. No.

Q. In which direction is Estancia Springs from the Chico Spring?

A. I am not a surveyor so as to be able to tell you accurately; but little more or less I can do so.

Q. Well, do it.

A. About east to west.

Q. Do you know a place there on this grant called Barranca?

A. Yes, sir.

Q. Do you know a place there called Del Tule?

A. Yes, sir.

Q. Also a place called Mestenitas?

A. Yes, sir.

Q. Laguna del Perro?

A. Yes, sir.

Q. Is that on this grant?

A. Yes, sir.

Q. Do you know more than one Laguna del Perro?

A. There is a lake of the Malinas.

Q. Well, do you know any other Laguna del Perro?

A. I do not know whether there are any other. There are some small lakes there; this one is a large lake.

Q. Well, does this large lake lie inside or outside of the grant?

A. Within.

Q. How far is it from Chico Lake?

A. I do not know; I do not remember.

Q. Do you know the direction?

A. The lake Laguna del Perro lies to the north.

Q. Locate your Perro Spring.

A. I am not going to draw this thing exactly; a little more or less I am going to draw it. There, now, you have got your mountain and your Crow Springs.

- 64 Q. Now locate the Torreon. [Witness does so.]
 Q. Now locate the Laguna del Perro. [Witness does so.]
 Q. Now locate the Mostenita Springs. [Does so.]
 Q. Now locate the Chico Springs. [Witness locates them.]
 Q. Now locate the Cibola Mountains. [Witness does so.]
 Q. Now locate the Ojo del Cibola. [Witness does so.]
 Q. Now locate the Salt Lakes. [Witness does so.]
 Q. Now locate your Estancia Springs. [Witness does so on blackboard before him.]
 Q. Now locate Pedernal Hill. [Witness does so.]
 Q. Now draw the outboundaries of the grant. [Witness does so on blackboard before him.]

Cross-examination by MR. REYNOLDS:

- Q. Do you know anything about the location of what is called the Whitney grant?

A. No, sir.

- Q. Did you ever hear of a grant called the Sandoval grant?

A. No, sir.

- Q. You never heard of it in 1857 when you lived on this grant?

A. No, sir.

- Q. You have not heard of it until very recent years, have you?

A. Not until now, when I heard you mention it here.

- Q. Did you ever know a grant called Estancia grant?

A. Only the grant of Don Bartolome Baen.

- Q. Did you ever hear of a grant called Antonio Sandoval grant?

A. No, sir.

- Q. Did you ever hear of a grant called Neri's Antonio Montoya grant?

A. No, sir; neither.

- Q. Did you ever hear of a grant called the Ojo de los Cochinos?

A. I heard the Ojo de los Pueros spoken of. Don Bartolome Baen brought more than a thousand pigs there and put them at these springs; hence it was called Ojo de los Pueros.

- Q. That is within this grant?

A. Yes, sir.

- Q. Did you know of a grant there besides the Bartolome Baen grant?

A. No.

- Q. Your people claimed it all the time?

A. As belonging to Bartolome Baen.

- Q. And after his death as belonging to his heirs?

A. Yes.

- Q. Are you one of his heirs?

A. Yes.

- Q. You were living there all the time?

A. Not all the time; I was except during the time when I was living at Tome.

- Q. But you and the heirs of Bartolome Baen claimed to hold possession all the time; some of them were out there at Torreon nearly all the time?

A. Yes.

- Q. They were pasturing their stock at Estancia Springs, weren't they?

A. Yes, sir.

- Q. All the time?

A. All the time during which we lived there; yes, sir; and the other heirs too, also.

Q. Did the people at Torreon build those acequias and irrigating ditches?

A. I do not know; I understand it was done by Bartolome Baca, because I understand that it was he that had the first acequia.

Q. Who told you so?

A. My mother.

Q. When did she tell you so?

A. During her lifetime.

Q. Was anybody living at Torreon at the time of Bartolome Baca's death?

A. Servants of Don Bartolome Baca had lived there.

Q. Wasn't Torreon established until 1841, after you were born?

A. I do not know.

Q. Your mother didn't tell you about that?

A. No.

Q. Bartolome Baca never lived on this grant, did he?

A. I do not know whether he lived there or not.

Q. Don't you know he did not?

A. His children lived there, and he might have lived there also.

Q. Don't you know where Bartolome Baca lived all his lifetime?

A. I do not know; I can not know; I knew that he lived there and at San Fernando.

Q. Did your mother tell you he lived there all his life?

A. No.

Q. You never made any enquiries about that?

A. No.

Q. He died there?

A. Yes.

(b) Q. Didn't he live at Manzano at one time?

A. I think he lived there, because he was a settler of Manzano.

Q. One of the first settlers?

A. You, sir.

Q. Wasn't he there before the settlement was made?

A. I do not know whether he was there, but I believe he was there.

Q. Is it your information that Bartolome Baca was at Manzano before any settlement was made there?

A. I do not know; I think so; I have no information on the subject.

Q. You say your father was administrator of Bartolome Baca's estate?

A. You, sir.

Q. Did Bartolome Baca leave a will?

A. I do not know.

Q. Did you ever look for one?

A. You,

Q. Didn't find any?

A. No.

Q. Wasn't his wife his administratrix?

A. I do not know; I believe so.

Q. Then your father was not?

A. Yes, he was.

Q. Were there two of them?

A. Perhaps there were two; I do not know.

Q. That is all.

Redirect examination by MR. O'BRIEN:

Q. The district attorney asked him whether Torreon was not established in 1841; ask him if he don't know that the servants and employees of his grandfather, Bartolome Baca, were all there, or a great many of them, at that time, and formed a sort of a town there by themselves long prior to 1841?

A. Yes, sir.

Q. How do you know it?

A. Through the servants which Don Bartolome Baca had.

Q. Was Antonio Bartolome Baca a servant of your grandfather?

A. He was not.

Q. Name me any of the names of people that you knew the first time you were ever living at Torreon, the first time you went there.

A. Don Mauricio Sanchez.

Q. Who was he?

A. Grandson of Don Bartolome Baca.

Q. Next?

A. Santiago Casar.

67 Q. Who was he?

A. Grandson of Don Bartolome Baca.

Q. I am asking you about the people living at Torreon when you first went there.

A. I do not remember anyone who lived at Torreon.

Q. These were all the people that you knew living there the first time you went there?

A. There were other persons there, but I do not remember who they were.

Q. Were they all peons of Bartolome Baca at Torreon the first time you went there?

A. No. Peons were there before Bartolome Baca.

Q. When did they leave?

A. I do not know when they left.

Q. None of the people that were living there the first time you went there were peons of Bartolome Baca, were they?

A. No.

That is all.

AUGUST 28TH, 1894, 10 a. m.

Court met pursuant to adjournment.

WILL M. TIPTON, of lawful age, being produced, sworn, and examined on the part of the plaintiff, testified as follows:

MR. O'BRIEN. Will the Government admit the competency of Mr. Tipton?

MR. REYNOLDS. The Government will admit his competency for the purposes of the case.

Direct examination by Mr. O'BRIEN:

Q. Mr. Tipton, I will get you to look at these papers [hands witness paper]; look at that signature there of Melgares and state in whose handwriting that is. How often does it appear, first?

A. It appears in the margin of the second page, and also at the bottom of the third page, although there the name is not complete, a portion of it having been torn off.

Q. Well, now, as to the first one mentioned?

A. What do you want to know about it?

Q. Whose handwriting is that in?

A. In my opinion it is Melgares'.

Q. You mean the governor of New Mexico?

A. Yes, he was governor at one time.

Q. Now as to the second signature, the one which is partially torn off, what have you to say?

68 A. I think the first letter is nearly torn off.

Q. Is there a cross to the "M" there?

A. With the exception of the stroke of the "M," that is all there is of the first letter.

Q. That stroke appears in the first signature crossing over the "M" on the first part of this signature?

A. Yes.

Q. Now, as to the remainder of it, how about that?

A. I have no reason not to think that the second one is also in the handwriting of Melgares.

Q. Now, that scroll at the bottom, called rubrie, what have you to say as to that?

A. I have never given any particular attention to the scroll he customarily attached to his name, but that name itself is certainly genuine, and I have no doubt the scroll is, although I have not carefully examined it. There is a great difference in the way he made these scrolls, as you can see from these two on this document.

Q. The writing over the last signature, in whose handwriting is that; there are two or three words over the last signature, whose handwriting is that, is it in the same ink; is it in the same ink as the signature ink; are those words in the same ink as the ink in the signature?

A. Yes, sir; I think they are, and I think the words are in the handwriting of Melgares himself.

Q. Now, isn't that ink over those signatures—the last words—different from any other ink on that paper, that whole document?

A. I think not; I think it is the same ink in which the marginal decree is written.

Q. Well, is it of the same ink as the last page above the signature, the other part of the document?

A. No, sir; I think not.

Q. The edge or margin there appears to be the same ink?

A. They appear to be the same.

Q. Would you infer from that that the ink on the last signature and the ink of the first signature came from the same place and the same office in which it was written?

A. I do not know that I would infer that; they might have been written in different places.

Q. Well, what have you to say about it?

A. I do not want to say anything about it; I do not want to start out guessing about it; it may have been taken out of the same ink bottle; I do not know anything about that.

Q. What is the first signature signed to—the marginal signature, what is it attached to?

A. The first signature of Melgares, the marginal signature, is attached to an order directing the alcalde to give the possession of this tract of land.

Q. You had occasion to refer to these printed documents, have you not, in comparison, hav'n't you?

A. I don't remember that I have; I may have looked at them a year or so ago; I have no recollection of it now; I have not examined these papers for a year.

Q. Will you have the kindness to look at this translation of that grant and compare it with the original [hands witness a book]? Look at the last signature there of Melgares, and also the words above the signature, los limites por. Is there anything written or was there anything written after that word por?

A. I see no evidence of it.

Q. No erasure that you can discern?

A. I never looked for one; I do not see any evidence of any erasure after the word por.

Q. That is all for the present.

Mr. O'BRIEN. We now offer in evidence this paper that I called the last witness' attention to, marked No. 2, file 123, recorded on pages 651 to 653 of vol. 6, private land claim records.

Mr. REYNOLDS. I object to the introduction of that instrument for the reason that it purports to be an original produced from private hands; it has not been shown that it was ever an archive; the decree provides that it shall be returned in order that it may be approved and the original placed in the archives, and the testimonio, or evidence of title, be given to the grantee. There is no memorandum or note to the effect that the instrument was ever an archive, and it has not been shown in any way
70 that it ever was an archive.

The CHIEF JUSTICE. We will take the document subject to the objection.

Mr. O'BRIEN. We now offer in evidence translation of these grant papers; translation of the original paper.

JOSE ANTONIO PADILLA Y MONTOYA, of lawful age, being produced, sworn, and examined on the part of the plaintiffs, testified as follows:

Direct examination by Mr. O'BRIEN:

Q. What is your name, residence, and age?

A. Jose Antonio Padilla y Montoya; I was born in the year 1808; I live at Manzano.

Q. How long have you lived there?

A. About forty years.

Q. Where did you live before that?

A. In Valencia, where I was born.

Q. Do you mean the county or the town?

A. The town of Valencia.

Q. How far is that from Manzano?

A. There may be about ten or twelve miles.

Q. Do you know this tract, or grant, of Bartolome Baca, in Valencia County?

A. Yes, sir.

Q. How long have you known that?

A. Since 1829.

Q. Whom did you come there with?

A. With my father.

Q. I mean when did he first come upon the territory of the Bartolome Baca grant?

A. I went first to the Torreon when Juan Baca and Manuel Baca were with peons, servants.

Q. When was that?

A. I do not remember; it was in the year 1829 that we went to Manzano; I was a shepherd.

Q. (To the interpreter.) Where did he first see those two men he has mentioned at Torreon, Juan and Manuel Baca?

A. Perhaps about the year 1830; I was a shepherd there, with sheep and goats.

Q. Who were these two men; who were they sons of?

A. They were sons of Don Bartolome Baca.

71 Q. What were they doing at Torreon?

A. They had a corral, a torreon, and houses, and they were there with their servants.

Q. How many servants did they have, if you know?

A. All of us at Manzano were his servants.

Q. Did they have any flocks or herds at that time?

A. They had flocks of their father, Don Bartolome Baca.

Q. Where did they keep them?

A. I saw herds of horses at Estancia.

Q. Coming back to Torreon, were there or were there not there the first time you went there any acequias, irrigating ditches?

A. I saw an irrigating ditch which run along at the beginning to the Vega Blanca, and lower there was one acequia on the other side; they were for gardens.

Q. Well, what was the length of this acequia, as well as you can judge?

A. They drove me away from the acequia; would not let me get any water, because they said to belonged exclusively to them.

Q. I am asking him how long were those acequias?

A. I do not know how long they were; they—it reached as far as Vega Blanca.

Q. How far was that from Torreon?

A. I do not know; it is quite far.

Q. Well, now, did those irrigating ditches furnish water to any fields that were cultivated there or not?

A. Yes, sir; the servants of Don Bartolome Baca planted there.

Q. How much land did they plant, and what did they raise, if you know?

A. I do not know how much land; they planted corn and beans, and gardens.

Q. To the nearest of your recollection, how many varas wide and how many varas long was the cultivated land under those *acquias*?

A. I do not know; there may have been one acre of land, because they were but beginning there then; they were beginning their settlement then.

72 Q. And how long did they continue there, if you know?

A. I do not know; some a long time. There are still persons living there.

Q. Is Vega Blanca within the grant, if you know?

A. Yes.

Q. How long did you continue to know the settlement of Torreon?

A. Since the year 1829. In the year 1829 my father took me to live at Manzano.

Q. Did you know Bartolome Baea in his lifetime?

A. I knew him very well.

Q. Do you know when he died?

A. I do not know the date.

Q. At the time of his death—immediately prior to the time of his death—how many *acquias*, how many ditches, and how much land was under cultivation at Torreon?

A. I do not know how much land; there were three ditches.

Q. Well, was there more under cultivation and more *acquias* at the time of his death than there was when you first saw it?

A. There was certainly more.

Q. At the time of his death do you know whether any other people were living at Torreon than the employes and servants of Bartolome Baea?

A. His servants and his sons only lived there.

Q. Do you know about how many persons they constituted all at that time—how many persons composed that place at the time of his death?

A. I do not know; I saw about four or five houses of the workmen.

Q. Can you give the names of any of the workmen, if you knew them?

A. Yes.

Q. Mention their names, as many as you can recollect.

A. Bernardino Chaves; Bernard was at estancia as overseer.

Q. What other servants were at Torreon?

A. I knew him they called Merchoche; another whom they called El Barrose; another, Jose Maria Marta; another, Jose Manuel Trujillo; those I knew.

Q. Well, now, the first one, you say, he was at estancia; what was he doing there?

73 A. He was overseer, taking care of the stock and looking out for the men.

Q. What did he have there at estancia besides stock?

A. They had also horned cattle.

Q. How many horses did they have, as near as you know?

A. I saw the places full of horses and cattle, but I do not know the number.

Q. Were there any sheep there?

A. They had about fifteen lots of sheep; I do not know how many there were, though.

Q. Fifteen lots?

A. Yes.

Q. How many sheep in a partida?

A. I do not know; I do not know how many there were.

Q. Were there one hundred or were there a thousand or three thousand in those partidas, each one?

A. There must have been at least five thousand sheep in each lot.

Q. How many men were assigned to take charge of each lot?

A. I do not know, sir.

Q. Now, you said the men at Manzano were employes of Bartolome Baca, have you not?

A. Yes; he helped us and we all served him.

Q. Did you ever drive any of your father's animals near the estancia?

A. Yes; I drove them near there, and Mr. Bernardo Chaves drove me away from there and wanted to horsewhip me.

Q. Why, what was the occasion of that?

A. Because my father had no right to water his stock there; that it was the property of Bartolome Baca.

Q. How far did he say the property of Bartolome Baca extended, if at all?

A. In which direction?

Q. In any direction and in all directions.

A. I knew that from the Cuervo of the Chico, and from the Chico to the Pedernal, and from the Pedernal to the Cibolo, and from there to the summit of the mountain, and from the summit of the mountain back to the Cuervo; I knew nothing about the survey, but it was notorious among the people that those were the boundaries.

Q. At the time you spoke of being driven off by this Bernardo Chaves, was that during the lifetime of Bartolome Baca?

74 A. Bartolome Baca was still living then.

Q. Can you say about what year that was?

A. No, sir.

Q. Was it when you first came there, or was it some time subsequent to your coming there?

A. It was some time after I went to live at Manzano.

Q. Did you ever hear the two sons of Bartolome Baca who lived at Torreon say anything about this grant.

MR. REYNOLDS. I object to the form of the question; it is incompetent, and he can not prove ownership that way.

THE CHIEF JUSTICE. He may answer the question subject to the objection.

Q. (Continuation of the question.) What, if anything, did they say?

A. Yes, sir; that it was the property of their father.

Q. Now, at the time that you lived at Manzano and worked for your father, how many people, as near as you can guess, were in the employ of Bartolome Baca on this grant?

A. I do not know ; there were a good many ; I do not remember how many there were.

Q. Well, were there twenty, or one hundred ?

A. About thirty.

Q. Now, to whom did all the horses, cows, and sheep belong that were there on the grant ?

A. To Bartolome Baca.

Q. Was there any planting at any time, or cultivation at this Vega Blanca ?

A. I never knew any cultivation there ; I knew the ditches, but I never saw any cultivation there.

Q. Who was it, if you know, that was cultivating the land that was irrigated by those ditches ?

A. Yes, the servants of Bartolome Baca.

Q. Do you know what quantity of corn they raised, and what was done with it ?

A. No, sir ; I was herding my sheep ; I do not know.

Q. During the time that you were there from 1829, what do you know about the Indians in relation to this grant of course ?

A. They were very bad Indians ; they did a great deal of damage.

Q. What was done towards preventing their doing damage and making incursions, and who did it ?

75 A. They made campaigns against them.

Q. Who made campaigns, and who was at the head of the campaigns ?

A. Don Bartolome Baca attended to that business.

Q. Whom did he get as his assistants ?

A. I do not remember.

Q. Do you mean you do not remember the names of the localities from which he drew his assistants ?

A. The town there, about there.

Q. You mean the people of Manzano and Torreon ?

A. They got men from everywhere for their campaigns, all around.

Q. Do you know anything about a blockhouse at Torreon being built, and who built it ?

A. That is the Torreon itself.

Q. Who built that ?

A. Don Bartolome Baca and his servants.

Q. Do you know in what year that was built, or about ?

A. About the year 1830 ; there were houses there in 1829.

Q. Do you know what became of those two sons of Bartolome Baca that lived at Torreon ?

A. I understood that Juan Baca had gone to California ; I do not know what became of Manuel.

Q. Do you know what time he went to California ?

A. No, sir.

Q. That is all.

Cross-examination by Mr. REYNOLDS:

Q. You were formerly a sheep herder ?

A. Yes, sir.

Q. That is your business yet ?

A. No, sir.

Q. What is your business now?

A. I am a farmer.

Q. Where do you farm?

A. At Manzano.

Q. You have been living there since 1829?

A. Yes, sir.

Q. Did you know Bartolome Baca personally?

A. I knew him very well, indeed.

Q. Quite intimate with him?

A. Yes, sir.

Q. He lived at Manzano once, at one time, didn't he, Bartolome Baca?

A. I saw him there sometimes; and I saw his sons and his servants living at the Torreon.

Q. How much of a place was Manzano when you went there?

76 A. It was quite large.

Q. Fields being cultivated there at that time? I am enquiring about Manzano.

A. Yes, sir.

Q. People had been there long time?

A. Yes, sir.

Q. Had irrigating ditches?

A. Yes, sir.

Q. Were they all a continuation of the same acequias?

A. No, sir.

Q. Where did those acequias come from?

A. Out of the spring on the other side of Manzano.

Q. Was there a spring at Torreon?

A. Yes, sir; there was.

Q. That is how it got its name, wasn't it?

A. Torreon was built there by Don Bartolome Baca.

Q. Then it did not have the name of Torreon before Bartolome Baca went there?

A. No, sir.

Q. He gave it that name?

A. The people gave it that name because Bartolome Baca built a torreon there.

Q. You remember it?

A. Yes, sir; I remember that it was because Don Bartolome Baca built the torreon there, and it was called the torreon of Don Bartolome Baca.

Q. Did you ever know a man named Nerio Antonio Montoya, who lived at Torreon?

A. Don Nerio Antonio Montoya lived at Ojo del Monteno, and he also had a rancho.

Q. Where did he have a rancho?

A. At Ojo del Chico.

Q. Did he have a ranch anywhere else?

A. No, sir.

Q. Did you ever know a place called Tajique?

A. Yes, sir.

Q. Chiili?

A. Also.

Q. Did you ever know a place called Tome?

A. Yes.

Q. Were you ever there?

A. Yes, sir.

Q. What direction is it from Manzano?

A. It lies to the northwest, but it is opposite to Monzano.

Q. How far from it?

A. About ten leagues; I do not know exactly how far.

Q. Did you ever know a man named Antonio Sandoval?

A. I knew him very well; he was the husband of Dona—

Q. Very intimate with him?

A. No; but I knew him.

77 Q. Did you know him in 1845?

A. I do not remember what year I knew him, but I knew him,

Q. Did you ever see him?

A. I saw him while he was living; yes.

Q. Did you ever see Juan Baca?

A. Oh, yes; I saw him several times.

Q. Did you ever see him at Tome?

A. I saw him in San Fernando in his father's house.

Q. How many people were living in Tome when you first knew it?

A. I do not know, sir; I was born in Valencia, and I knew Tome ever since I was born.

Q. That was where the alcalde was, wasn't it?

A. There were alcaldes in sever' places.

Q. Well, the principal alcalde was at Tome, wasn't he?

A. I do not remember; I do not know how that was managed.

Q. That is all.

Redirect examination by MR. O'BRIEN:

Q. Do you know what relation existed between Nerio Antonio Montoya and Bartolome Baca?

A. I do not know.

Q. Do you know whether they were friends or not?

A. I do not know whether they were friends or neighbors; I do not know.

Q. Was it before or after the death of Bartolome Baca that Nerio Montoya came to the hog ranch at Cochicho?

A. It was afterwards.

Q. It was after his death?

A. Yes, sir.

Q. Before the death of Bartolome Baca, do you know whether he ever lived at a place called Coehinos?

A. He had some hogs there and men looking after them.

Q. Do you know how long he had them there—whether it extended over a period of years, or simply for one season?

A. He had them there for some years, and finally the hogs went wild.

Q. Do you know how many there were, about?

A. I do not know.

Q. Did you ever see them?

78 A. Yes, sir; I saw one lot of about one hundred hogs.

Q. Did he have the hogs divided into partidas the same as sheep, or in one lot?

A. They were altogether.

Q. Did you know Jose Garcia de la Mora?

A. No, sir.

Q. Did you know Jesus Hurtado?

A. Oh, yes.

Q. What was he in relation to Bartolome Baca?

A. He was one employed by him; he died only a few years ago.

Q. What was his business?

A. He lived with his children, who supported him.

Q. In his early life, in 1829, what was he doing then?

A. He was a farmer and muleteer.

Q. For whom did he work?

A. He worked for those who paid for it.

Q. Did you ever know of his working for Bartolome Baca?

A. Yes, sir, also.

Q. How long was he working for him?

A. He worked for him when he called on him and sent for him. Bartolome Baca helped the people of Manzano; he wanted to see it settled, and gave them oxen and horses.

Q. Did you know Miguel Lucero?

A. Yes, sir; I knew him very well.

Q. Did he work for Bartolome Baca?

A. I do not know whether he worked for him or not; he lived there.

Q. Where?

A. He lived at Manzano on the pueblo of Cuar-r.

Q. That is all.

Recross-examination by Mr. REYNOLDS:

Q. Did you know a man named Martin Torres?

A. Knew him very well.

Q. Where did he live?

A. He lived at Manzano, and also at Torreon.

Q. Did he work for Bartolome Baca?

A. Yes.

Q. What did he do?

A. Anything they set him to do.

Q. Was he a shepherd?

A. He was a shepherd and did what they sent him to do.

79 Q. Did you know Clemento Chaves?

A. Very well.

Q. Where did he live?

A. He lived at Los Enlaces.

Q. Do you know where he lived in 1879?

A. I do not remember.

Q. Did he ever live in Tome?

A. Yes; he lived there after he was married.

Q. Do you know whether he ever worked for Bartolome Baca?

A. I do not remember.

Q. That is all.

Mr. REYNOLDS. That is all.

WILL M. TUTTOS, being recalled for further examination, testified as follows:

By Mr. O'BRIEN :

Q. Do you know whether there were any other grants made by Melgares in this territory?

A. I believe he made a number of grants.

Q. Can you name any of them, or all of them?

A. I can only state from recollection; I can not be perfectly positive about them; I think Melgares made the Canon de Carnue grant in 1819; I think he made the Antonio Ortiz grant and the Anton Chico grant.

Q. Do you know what date that was?

A. My impression is that it was in 1822.

Q. Do you know what time the Ortiz grant was made; wasn't it in 1818 or 1819?

A. I do not recollect; I never had occasion to look it up; I think it was in 1819.

Q. Do you know the date of a grant to Pedro Armendariz reported number 30, and also a grant in the same name, a grant to the same grantee under another claim, which is reported number 34; do you know the date of that?

A. No; I can not say that I do.

Q. Do you know Lady of Light, a grant of that name, commonly called that name?

A. I recollect such a grant, but I do not remember whether Melgares made it or not.

Q. Do you know whether any of those grants have been confirmed by Congress?

MR. REYNOLDS. I object to the question, because Congress could give it away whether Melgares gave it away or not.

THE CHIEF JUSTICE. We think it is not competent.

Mr. O'BRIEN. That is all.

Cross-examination by Mr. REYNOLDS:

Q. Do you know whether Melgares made the Eaton grant?

A. Yes, he did; I had forgotten that.

Q. What is that known as—the Eaton grant?

A. It is commonly called, sometimes called, San Cristobal.

Q. Do you know when that was made?

A. I am not certain when it was made; I forget the date; it was about the time that this Galisteo claim came up; I think some time in the spring of twenty-two, but I am not perfectly certain about it.

That is all.

Mr. O'BRIEN. That is all.

Mr. O'BRIEN. We ask now that those grants made by these gentlemen may be introduced in this case.

MR. REYNOLDS. I object to their introduction, because it is not shown that Melgares did exercise the right to dispose of the public lands from 1818 to 1823.

The CHIEF JUSTICE. We will take them subject to the objection.

Mr. O'BRIEN. We desire now to read the testimony taken before the surveyor-general in regard to this grant of the following persons: Jesus

Sauvadra, Miguel Lucero, Mariana Torres, Jesus Sauvadra y Romero, Clemente Chavez, Matias Sanchez, Clemente Chavez.

After the reading of the said testimony a recess was taken until two o'clock p. m.

The hour of two o'clock p. m. having arrived, the further hearing of the above-entitled cause was resumed as follows:

MR. O'BRIEN. We desire to call Mr. Bergere as a witness.

A. M. BERGERE, called as a witness on behalf of the plaintiffs, being duly sworn and examined, testified as follows:

81 Direct examination by Mr. O'BRIEN :

Q. What is your name?

A. A. M. Bergere.

Q. Where do you reside?

A. At Los Lunas, New Mexico.

Q. What relation are you to the plaintiff, Elosia L. Bergere?

A. Husband.

Q. Are you familiar with the lands of the Bartolome Baca grant?

A. Yes, sir.

Q. How often in the last few years have you been over it, if at all?

A. Some twenty or thirty times.

Q. Have you or your wife any cattle or horses on the property of the Bartolome Baca grant at present?

MR. REYNOLDS. I object because it is immaterial.

No ruling.

Q. Do you know the boundaries of the grant?

A. I do by hearsay.

Q. What are they?

MR. REYNOLDS. We object, because you can not prove the boundaries by hearsay evidence.

THE CHIEF JUSTICE. We suppose it is asked for some other purpose.

Q. Are you acquainted with the alleged boundaries of the grant?

A. Yes, sir.

Q. What are they?

A. On the south the Crow Springs and the Chico Springs; from there east to the Pedernal Hills; from there north to the Ojo del Cibolo or Buffalo Springs, and from there to the top of the Mansano Mountains, running south then on the Manzano Range to opposite the Crow Springs, and from there southeast to the Chico Springs.

Q. Are you acquainted with these objects on the grant and the relative distances from each?

A. Yes, sir.

Q. Have you at any time prepared a map of the same showing the size or the plan of this grant, the shape of it?

A. I have; yes, sir.

Q. Is that the map? [Hands witness map.]

A. Yes, sir; that is a copy of the map.

82 Q. More copies than one were prepared?

A. Yes, sir; about eight or ten.

Q. From your actual knowledge and observation, is that a true copy?

A. From my recollection, this is a true copy of the boundaries.

Q. As to shape?

A. As to shape it is as nearly perfect as we can get it without a survey, I have been over the ground very carefully, and I consider it as correct as we can get it.

Q. What relation is your wife to any of the owners of this grant, or any of the alleged owners of this grant?

A. My wife was the widow of Manuel B. Otero, son of Manuel A. Otero, who bought all the interest or portions of the interest of Bartolome Baca grant.

Q. Do you know, as a matter of family history, the children of Manuel A. Otero?

A. Yes, sir.

Q. Who are they?

A. Manuel B. Otero, and Amelia Otero, and Miguel Otero.

Q. Are they living or dead?

A. Two of them are living.

Q. Which?

A. Miguel Otero and Amelia Otero; Manuel B. Otero was the first husband of my present wife.

Q. Manuel B. Otero, when did he die?

A. Died, as far as I can recollect, in March, 1882.

Q. Testate or intestate, leave a will or without a will?

A. That is a matter of discussion; he left a will, but it has been contested.

Q. Never been proven?

A. No, sir.

Q. Now, Manuel B. Otero, when did he die?

A. Died the 17th day of August, 1888.

Q. Were letters taken out upon the estate of Manuel A. Otero?

A. Yes, sir.

Q. By whom?

A. By Manuel B. Otero, his son.

Q. Do you know what he received from him?

A. He received everything he had, papers, lands, and property of all descriptions used in his house.

83 Q. What became of the estate, and what became of the papers? Who succeeded the son, after his death, as administrator?

A. After Manuel B. Otero's death Dr. E. C. Henriques was appointed administrator of the estate.

Q. Do you know what became of the papers after they came into his possession, the papers of the estate of Manuel A. Otero?

A. Some few are in the hands of my wife.

Q. I am asking, now, as to the deeds to this grant testified to by you, the deeds to this Bartolome Baca grant?

A. The deeds of this grant were never found. In the early part of 1888, I have forgotten exactly when, there was a fire in the old home-stead of Otero and all the papers were burned in that fire.

Q. Well, what enquiries have you made among the Oteros and Henriques for the deeds of this property, and from any of the Baca heirs, if any?

A. My attorneys have made proper inquiries from Mrs. Henriques, widow of Dr. Henriques, and others.

Q. What do you know of your own personal knowledge?

A. I have personally asked for these papers, and Mrs. Henriques informed me that they were all burned up in the fire at La Constanca.

Q. Have you any other knowledge of them at all?

A. No, sir.

Q. Have they ever been in your possession, or in your wife's possession, or in the possession of any of the other heirs you have mentioned?

A. No, sir.

Q. What has become of the interest of Dr. Henriques and Beatrice Otero in this claim?

A. Mrs. Dr. Henriques and Mrs. B. Otero sold their interests to my wife.

Q. That is all.

Cross-examination by Mr. REYNOLDS:

Q. Mr. Bergere, you say that commencing at the Pedernal Hill, the eastern boundary runs directly southwest to the Chico Springs?

A. Yes, sir.

Q. And from the Pedernal Hill, the northern boundary runs in a north-westerly direction to the Ojo del Cibolo to the top of the Manzano Mountains—that line runs northwest?

A. Yes, sir.

Q. Then from the top of the Manzano Mountains down to the Ojo del Cibolo, or Crow Springs?

A. Yes, sir; it is marked right here [looking at and pointing to the place on the map before the witness].

Q. Will you mark it there on the map by a letter?

A. Yes, sir. [Witness makes letter on map.]

Q. What does this line here [pointing on map] indicate?

A. I understand that means the grant that was made to Nerio Antonio Montoya; as I can recollect, that is what it means.

Q. Then the east line of the Nerio Antonio Montoya grant is about on a line at the junction of the Manzano Mountains and Torreon, isn't it?

A. As far as I can recollect it is more or less so, but I would not say positively, but I believe it is.

Q. Then your line runs, as you recollect, from the Ojo del Puerco directly southeast to the Chico Springs, does it?

A. Yes, sir.

Q. That is all.

Mr. O'BRIEN. That is all.

MIGUEL A. OTERO, of lawful age, being produced, sworn, and examined on the part of the plaintiffs, testified as follows:

Direct examination by Mr. O'BRIEN:

Q. What is your name?

A. Miguel A. Otero.

Q. Who was your father?

A. Miguel A. Otero.

Q. Who was his brother?

A. Manuel A. Otero, one of his brothers.

Q. Do you know of your father ever having purchased an interest of this grant from the heirs of Bartolome Baca?

A. Yes, sir.

Q. How many of them, if you know?

A. He bought from two.

Q. Who were they?

A. Baca and Baca.

Q. Do you know what became—when did your father die?

A. Father died on the 30th day of May, 1882.

Q. Testate?

A. Intestate.

Q. Who was administrator of his estate?

A. I was.

Q. Did you come into possession of his papers and books?

85 A. Yes, sir.

Q. Among them did you find any deeds for this interest that he purchased?

A. No, sir.

Q. Do you know what as a matter of fact became of those deeds?

A. Only from hearsay.

Q. You never found them?

A. No, sir.

Q. What enquiry or search have you made for them?

A. Well, I looked around all over his papers for them, and I even went down to Los Lunas and have been unable to find any of the papers.

Q. Of whom did you enquire there?

A. I went to the probate clerk and asked for certified copies of any deeds there might be in the county recorder's office.

Q. They were recorded in Valencia County, were they?

A. Yes, sir; and I got certified copies of those deeds.

Q. What heirs did your father leave?

A. He left his wife and three children.

Q. Who are they?

A. My mother and my brother here, Page B. Otero, my sister, Marie Otero, who married Mr. O'Brien, and myself.

Q. They are the plaintiffs in this suit?

A. Yes, sir.

Q. That is all.

Mr. REYNOLDS. I do not want the record to show that they are plaintiffs in the suit. I insist that if these people want to become plaintiffs in this case they must be named in the petition; unless they are named and described in the petition we are not bound to answer to them.

No ruling.

Mr. O'BRIEN. We now offer in evidence certified copies of these various deeds as follows: Deed dated July 14, 1879, from Placido Robles to Miguel A. Otero, recorded in "A-4, page 243, in Valencia County, New Mexico; Deed dated July 15, 1878, from Jose Maria Sanchez y Baca to Manuel

Antonio C.tero, recorded in Book A-4, page 207, in Vallencia County, New Mexico;

86 Deed dated March 14, 1893, from Emilia Otero de Henriques and Charles H. Armijo to A. M. Bergere and wife and children, recorded in Book B-2, page 216, in Vallencia County, New Mexico;

Deed dated July 22, 1876, from Juan Chaves y Baca and Juliana Castillo de Chavez to M. A. Otero, recorded in Book A-4, page 205, in Vallencia County, New Mexico;

Deed dated June 29, 1878, from Placida Chavez y Baca to M. A. Otero, recorded in Book A-4, page 211, in Vallencia County, New Mexico;

Deed dated June 10, 1878, from Jose Luna y Lugarda Baca de Luna to M. A. Otero, recorded in Book A-4, page 213, in Vallencia County, New Mexico;

Deed dated May 24, 1878, from Santiago Sanchez y Baca and Maria Perca de Sanchez to M. A. Otero, recorded in Book A —, page 206, in Vallencia County, New Mexico;

Deed dated June 27, 1878, from Mauricio Sanchez y Baca to M. A. Otero, recorded in Book A-4, page 209, in Vallencia County, New Mexico;

Deed dated August 4, 1879, from Candelaria Baca to Miguel A. Otero;

Deed dated July 16, 1878, from Julian Sanchez y Teresa Sanchez y Sanchez to M. A. Otero;

Deed dated July 17, 1778, from Jesus Ma. Sena y Baca y Agapita Ortiz to M. A. Otero, recorded in Book A-4, page 215, in Callencia County, New Mexico;

Deed dated February 14, 1869, from Mucio Chavez and Carmel Vigil de Chavez to M. A. Otero;

87 CLARENCE KEY, of lawful age, being produced, sworn, and examined upon his oath, testified on the part of the plaintiffs as follows :

Direct examination by Mr. O'BRIEN :

Q. Mr. Key, what is your business?

A. Translator; expert Spanish translator of Spanish law papers.

Q. You have had occasion to familiarize yourself with the surveyor-general's office, and the records and papers therein?

A. Yes, sir.

Q. How many years?

A. For nine years, and I was employed there once for six months, and in the last five or six years I have frequent to examine the papers and archives.

Q. Did you ever have occasion to go over all the papers in the surveyor-general's office and make a note of it?

A. Not officially; nor, sir.

Q. By what plan in the surveyor-general's office did you work; what was it you did there?

A. I examined many of the archives and papers down in the surveyor-general's office and compared many of them.

Q. Now, as a matter of fact, what was the practice; from your inspection, what seemed to be the practice of the governor's office in relation to the keeping of the original grants, or of keeping copies of them, or keeping entries of them, when grants were made, as far as you can ascertain from the records?

A. I really am not prepared to say that there was any settled or regular practice in the office of the governors in keeping the papers in the way you refer to.

Q. Well, what was the practice, whether it was regular or irregular?

A. I think it was irregular.

Q. How does it appear to have been done?

A. In some instances in making grants of land, from what I could learn from the archives, the grants were given to the people; the grant itself, that is to say the grant papers, were recorded in books; at other times 88 the original grant papers appear to have been kept by the governor, and certified copies given to the grantees.

Q. Was there any ever given out of which there was no memorandum or copy kept?

A. I understand that prior to 1713 there were a great many grants given out of which no copies were kept.

Q. What do you know with reference to subsequent time to 1800?

A. I do not know anything particular in regard to that falling subsequent to 1800.

Q. Do you know of any grant having been given and no copy kept in the office of the granting power?

A. I can't say that I do, sir; I can not recollect any; I have not made any particular examination of the grants with a view to ascertaining that fact.

Q. Is there anything to show in the office that the originals were given out and copies kept?

A. I can only say that I know in some instances the grant papers were originally given to the grantees, but I am not prepared to say when that practice was changed, or when the other practice originated.

Q. In some cases the originals were given out and no copy was retained in the office; none appearing there, at least?

A. I really am not prepared to say that no copy of it was kept in the office; I do not think I can answer the question intelligently, sir; I think if you would put it in another light I might; I do not exactly understand it.

Q. Is it not true that in some instances the original grants were given out and the records do not show that any copy was kept; there is nothing appearing in the office showing that any copy was retained there?

Mr. REYNOLDS. I object to the question.

The CHIEF JUSTICE. You may proceed.

A. In the grant made to Juan de Gabaldon, in the grant itself, that grant was made in 1752; the governor and captain general directed the alcalde to return the grant to him after placing the party in possession, in order that a note might be made of it in the proper books; it does 89 not appear in that grant that the paper was given to the grantee.

Q. I ask you if it does not appear in the various papers that are now in the archives themselves that were formerly filed, and those subsequently filed, that the various grants were given to the original grantee and nothing left in the archives by way of a memorandum of that grant, but the original was given out to the grantee himself?

Mr. REYNOLDS. I object to the question because it is leading.

The CHIEF JUSTICE. Possibly a change in the form of the question would not make it leading.

Mr. REYNOLDS. In many cases the only record of the grant existing now in the surveyor-general's office are such papers as have been filed with the surveyor-general by parties in interest since the creation of that office. It has been proven here frequently that in 1837 and some time about 1869-70 both those records were partially destroyed; that is a fact about which there can be no doubt.

The CHIEF JUSTICE. That concession may be made a matter of record.

Q. In your examination of the archives here, Mr. Key, where the original grant document has been returned to the archives, and the testimonio issued by the granting officer and the grant been approved by him, is it not the custom that the instrument will be endorsed to that effect?

A. I have seen such endorsements to that effect.

Q. Is that the general custom where the original has been returned to the archives and the testimonio given to the party when the grant itself provides that that shall be done, given to grantee, and the grant originally has been deposited in the archives, will be endorsed to that effect and the testimonio has been issued and the grant approved and the original returned to the archives for perpetual evidence?

Mr. REYNOLDS. I object to that as not being applicable to the rule to this case.

90 The CHIEF JUSTICE. You may ask the question and we will take it subject to the objection.

A. Yes, sir; that is the general custom.

Q. Is there any distinction between the protocol and the testimonio—what is the distinction between these two?

A. As I understand it, sir, a protocol is a book kept by the notary.

Q. I mean in regard to this grant.

A. I have not examined the papers in this case; I do not know anything about it.

Q. That is all.

Mr. REYNOLDS. That is all.

Mr. O'BRIEN. That is our case.

Mr. REYNOLDS. I desire to offer in evidence the testimony of Bartolome Chavez y Baca, taken before the surveyor-general, in this case, for the purpose of showing contradiction in his testimony.

Mr. O'BRIEN. I object because it is incompetent.

The CHIEF JUSTICE. We do not think the evidence is competent.

Mr. REYNOLDS. Then I ask to recall the witness on behalf of the Government.

The CHIEF JUSTICE. You may do so.

BARTOLOME CHAVEZ Y BACA, being recalled for further cross-examination on the part of the Government, being duly sworn on his oath, testified as follows:

Cross-examination by Mr. REYNOLDS:

Q. Did you testify in this case before the surveyor-general?

A. Yes, sir.

Q. Were you examined at length before the surveyor-general?

A. Yes, sir.

Q. Was not this question propounded to you: "Q. Are you personally acquainted with the children and heirs at law of Bartolome Baca, deceased; and if so, how long have you known them, and where they have lived since your acquaintance with them?" and did you not make this answer:

A. I did not know all his children, but I know all the heirs, and
91 have known them as long as I can remember, they being my kins-folk. They have all resided always here in the Territory?"

A. Yes, sir.

Q. Was not this question asked you, and did you not make the following answer: "Q. Do you know whether Bartolome Baca, your grandfather, left any last will and testament in writing? If so, do you know where that will is?—A. I do not know?"

A. Yes, sir.

Q. Was not this question asked you, and did you not make the following answer: "Q. Is it not true, upon reflection, that your grandfather left a last will and testament in writing, and did not that will come to your actual possession, and if to your actual possession, did you not deliver it to Manuel A. Otero, or some other person?" and did you not make the following answer?—"A. He may have made such a will, but I know of none, and delivered none to said Otero or to anyone, but did deliver to said Otero the grant for said land?"

A. Yes, sir.

Q. Was not this question asked you, and did you not make the following answer: "Q. How many towns and settlements are they within the boundary of the grant in question, and how long have they been in existence?" and did you not make the following answer?—"A. These are the towns of Torreon, Tajique, and Chilili, and I know of no settlements, though they are said to be some small ones in the mountain. I do not know how long the towns have been in existence, but they were there when I first knew the localities, and were settled after the death of Batolome Baca; unless it be Torreon, as to which town I cannot say?"

A. Yes, sir. I did not say that they were settled after the death of Batolome Baca.

Q. That is all.

Mr. O'BRIEN. That is all.

Mr. REYNOLDS. Your honors please, I offer in evidence the original grant to the town of Manzano, dated 1829, and translation
92 thereof, which grant has been confirmed.

Mr. O'BRIEN. I object to the same because it has no bearing on this case.

The CHIEF JUSTICE. You may put that in; we will not argue this case now.

Mr. REYNOLDS. I offer in evidence the grant and translation thereof to Nericio Antonio Montoya made in 1831, reported number 51.

Mr. O'BRIEN. Do I understand you to admit that as a valid grant?

Mr. REYNOLDS. I am going on the proof as to the effect.

The CHIEF JUSTICE. We suggested a while ago that this whole question would be for argument on the final argument of the case.

Mr. O'BRIEN. I object to the admission of these documents.

The CHIEF JUSTICE. These papers may go in subject to your objections.

MR. REYNOLDS. I offer in evidence the original grant and translation thereof made to the town of Tejique during the year 1834, Rep. No. 21.

MR. O'BRIEN. I object to it.

MR. REYNOLDS. I also offer in evidence the original grant and translation thereof to the town of Torreon, made in 1841.

I also offer in evidence the grant and translation thereof known as the Chilili grant, made in 1841.

I also offer in evidence the grant and translation thereof made in 1845 to Don Antonio Sandoval, sometimes called the Estancia grant.

MR. O'BRIEN. I object to the admission of all these documents.

MR. REYNOLDS. If there is to be any question raised as to the genuineness of the signatures to these documents I will prove them by Mr. Tipton.

93 MR. O'BRIEN. No objection will be raised to the signatures of these documents.

MR. REYNOLDS. It is admitted that prior to the pretended grant which has been offered in evidence to Antonio Sandoval by the Mexican authorities in New Mexico had made other grants to Antonio Sandoval.

FERNANDO NOLAN, called as a witness on the part of the Government, being duly sworn upon his oath, testified as follows:

Direct examination by MR. REYNOLDS:

Q. Where do you reside, Mr. Noland?

A. Santa Fe, New Mexico?

Q. What is your age?

A. Sixty years of age.

Q. Where have you lived during your lifetime?

A. Well, I have lived here in New Mexico; for the most of the time I lived at Mora County, New Mexico.

Q. Do you know where what is now described as the Bartolome Baca grant, which lies east of Albuquerque—where it lies generally?

A. I do not exactly. I heard it there is a certain grant there somewhere in Manzano or Estancia. That is merely hearsay; I have not seen any papers.

Q. Do you know the general location where the grant is claimed to be?

A. Yes, sir; I have been there; not very well acquainted with the country there, but I have been there.

Q. Whom did you marry?

A. Why, I married two ladies.

Q. Give their names.

A. The first was Julianita Abujita Nolan; the second was Agapita Ortiz de Nolan.

Q. Well, is one of them a relative of Bartolome Baca?

A. Her husband was a grandson.

Q. Husband of whom; of which one do you mean?

A. Of the last one.

Q. I will get you to state if you ever received a paper purporting to be a certified copy of the last will and testament of Bartolome Baca, of her, your last wife?

94 A. Yes, sir; a will which purports to be the will of Bartolome Baca; it is a copy, certified; said to be a true copy.

Q. Do you know where she got it?

A. She got it from his papers—from her husband's papers.

Q. She got all his papers?

A. Yes, sir.

Q. This one was among the number?

A. Yes, sir; her husband's will, grant, and many other papers.

Q. Look at that paper [hands witness paper], Mr. Nolan—it is not all there—and state if that is a part of the paper you have reference to. I will hand you the balance in a few minutes.

A. Yes, sir; that is a part of the paper; I do not see the certificate. Yes, sir; that is a part of it.

Q. Now, Mr. Nolan, take that paper and say whether or not it is whole as delivered to you?

A. That is the same paper I got amongst my wife's papers; the same paper.

Mr. REYNOLDS. I offer this paper with translation thereof in evidence. The object of it is to show that Bartolome Baca, in his will in 1834, in disposing of his property, he did not mention the fact that he owned this grant or any interest in it.

Mr. O'BRIEN. I object to the admission of this document, because there is no proof that it is the will of Bartolome Baca, or that it was ever probated, or ever produced in any court. There is no evidence here what has become of the original, if there ever was one. It is a very singular circumstance that a will of this gentleman's wife's husband's grandfather could have been in their possession for the last sixty years and all the other heirs not heard of it.

The CHIEF JUSTICE. We will consider this objection hereafter.

Mr. REYNOLDS. I will have Mr. Tipton to verify the signatures on this document, and have him testify as to the genuineness of the original signatures.

The CHIEF JUSTICE. What else have you?

Mr. O'BRIEN. I wish to cross-examine Mr. Nolan.

The CHIEF JUSTICE. You may do so.

95 Cross-examination of Mr. Nolan by Mr. O'BRIEN:

Q. Mr. Nolan, you are an attorney at law?

A. Yes, sir; I have been practicing for some time.

Q. Are you a relative of the Antonio Sandoval who claims this grant and the property covered by the Bartolome Baca grant?

A. Yes, sir.

Q. What relationship do you claim to be of Antonio Sandoval?

A. I know the relation by my mother; she told me my grandmother was a niece to him.

Q. Do you consider you have an interest in that grant?

A. My father bought that grant.

Q. Do you inherit from your father?

A. Yes, sir.

Q. Haven't you sold your interest in that grant?

A. Yes, sir.

Q. What interest do you claim now?

A. No; none.

Q. You claim you have not got all the money; don't you claim some; that you have not been paid all the purchase money, and were not to be until the grant was confirmed, and you are still claiming a balance of the purchase money?

A. I do not care to answer that question until the court requires me.

Mr. REYNOLDS. It is not cross-examination.

The CHIEF JUSTICE. Proceed.

Q. Do you decline to answer that question?

A. If the court says so I will do it.

No ruling, but the witness proceeds.

A. I claim that a part of that money is due me, my mother, and brothers; that is, of the sale I made of the Antonio Sandoval grant, which, at the time of the sale, belonged to my mother—considered to belong to my mother—Heracina Nolan.

Q. How much do you claim is due?

A. It is due me to the amount that was paid me, \$2,500.00.

Q. That is the balance that is due you?

A. It is a little more due; twenty-five hundred dollars was to be paid on the purchase money and twenty-five hundred dollars for my expenses and handling the whole transaction.

96 Q. How much is now due you?

A. I think it is five thousand dollars.

Q. From whom is it due you?

A. From the Whitney brothers, James P. and Joel P.; he was representing his brother.

Q. They were the ones to whom the title was made?

A. Yes, sir.

Q. Was that conditional upon the grant being confirmed by Antonio Sandoval?

A. No, sir; it was not conditional; there was one condition as to twenty-five hundred dollars; they were to pay me twenty-five hundred dollars, as I said, for my work for handling the thing and doing the work for them, and twenty-five hundred dollars at the end of a suit that had been brought by a man by the name, I believe, of McAfee, I think it was.

Q. And you were never paid?

A. I have never seen the man since he got into trouble there at Estancia; I heard he is dead now.

Q. That is one of the defendants?

A. They are the defendants in this suit; yes, sir.

Q. Now, in regard to this paper you produced here that your wife gave you and she got it from the effects of her former husband?

A. She turned me over a lot of papers that she told me she got from her husband, and there was deeds and one thing and another; I found a good many other papers.

Q. Do you know a man named Gwynn that used to live in this city; whether he had it?

A. Probably he had it.

Q. Do you know whether it has ever been out of your wife's possession?

A. I do not think it has; it may.

Q. How long have you been married to your present wife?

A. Little over one year.

Q. From your knowledge, has that paper been in her possession since you have been married?

A. Yes, sir.

Q. She had it when you were married?

A. Yes, sir.

Q. Prior to that time, didn't a man by the name of Gwynn have that paper and offered it here for the sum of six hundred dollars if they would buy it?

A. I do not know anything about it.

97 Q. You have heard that it was hawked around here on the streets, haven't you?

A. No, sir.

Q. Do not know anything at all about it?

A. No, sir; I never heard that it was offered at all; the fact is it is not worth anything; I said to my friend here, I think these things ought to come to light—this will—for the benefit of the ones that ought to have it.

Q. That is all.

Mr. REYNOLDS. That is all.

J. FRANCISCO CHAVES, a witness produced, sworn, and examined on the part of the defendant, United States, testified as follows:

Direct examination by Mr. REYNOLDS:

Q. State your name, age, and residence.

A. J. Francisco Chaves; I reside at Los Lunas, Bernalillo County, New Mexico; I am sixty-one years old, past.

Q. How long have you resided in New Mexico?

A. I might say all my life, except when away at school or on business.

Q. Were you born in New Mexico?

A. Yes, sir.

Q. You are familiar with the country around east of Albuquerque, are you?

A. Yes, sir; I think I can say that I am.

Q. Do you know the general location of what is called the Bartolome Baca land grant?

A. Yes, sir.

Q. How long have you been familiar with that property?

A. Since 1858.

Q. Since that time have you been quite familiar with that country?

A. Yes, sir; I have been.

Q. Did you ever live upon this land grant, or what is claimed to be this grant, and when?

A. Yes, sir; I built a house upon it.

Q. Where?

A. At Ojo del Medio, on the grant that is being mentioned here.

Q. When was that?

A. In 1858.

Q. Was anybody in possession of the Bartolome Baca land grant at that time?

A. No, sir.

98 Q. When was the first time, subsequent to that time, that you heard any claim being made of that property as being the Bartolome Baca land grant?

A. I heard it at that time; the Nerio Antonio Montoya grant covered a portion of it.

Q. Were you notified at the time of any such grant?

A. No, sir.

Q. Did you understand it covered the Nerio Antonio Montoya grant?

A. Yes, sir.

Q. Well, did you know of any of the heirs of Bartolome Baca claiming to own the Bartolome Baca grant, or being in possession thereof, at any time before you testified in the proceedings in the surveyor-general's office?

A. Only their statements to me; the Don Juan Chaves, the father of this witness— that was here, at whose house I used to live before I began to build, showed me the boundaries from his house; I did not go over them at that time, but they told me so.

Q. What was said to you about the Nerio Antonio Montoya grant at the time you first occupied it?

A. It was stated that Mr. Baca and Don Bartolome Baca were very friendly, who had given this Nerio Antonio Montoya a band of five thousand sheep, and he prevailed upon Mr. Don Bartolome Baca to ask for a grant, and he applied for a grant. That is all I know; Mr. Montoya told me.

Q. Didn't you testify before the surveyor-general that you did not know anything about the heirs being in possession of the Bartolome Baca grant, or of their claiming it, except from the records of the surveyor-general's office?

A. Yes, sir.

Mr. O'BRIEN. I object, as it is leading, and he can not impeach his own witness.

No ruling.

Q. Did any of the heirs and legal representatives of Bartolome Baca claim to own any interest in the grant at the time of this matter was pending before the surveyor-general?

A. Yes, sir; they did.

99 Q. Didn't you testify before the surveyor-general in reply to such question that "as to the dead persons I do not know that they ever laid any claims to the grant; the few who had lived upon it, both from their actions and statements, never laid any claim to the grant until within the last six or seven years?"

Mr. O'BRIEN. I object to the question, as it is leading and immaterial; it is a matter about which he testified some other time.

The CHIEF JUSTICE. This question could not be introduced for the purpose of contradicting him about his original testimony, but for the purpose of breaking the force of the testimony at the present time and present recollection of the facts; the Government can not put this witness on the stand to take his testimony with the knowledge in advance of adverse testimony.

A. I did, sir.

Q. You have an arrangement by which you receive the title in case this grant is confirmed?

A. I have, sir.

Q. That is the reason you have not pushed that claim?

A. Yes, sir; I believe I so informed you; I believe that is what I testified to.

Q. And that was what you testified to at that time?

Mr. O'BRIEN. I object to the question, because it is immaterial.

A. Yes, sir.

Q. Did you know at the time the matter was pending before the surveyor-general what grants were claimed to conflict with the Bartolome Baca grant?

A. When I first came here to Santa Fe I did not; I had an idea that it conflicted with the Nerio Antonio Montoya grant, as well as with my own and with the Tajique and Torreon grants.

Q. Any others?

A. That is all that were claimed at that time. Then I asked the surveyor-general's clerk, Miller, to let me see the papers of the grant upon which they relied, and I discovered that the Sandoval grant conflicted.

100 Q. Well, if you were to square it the way your surveyors square grants in this country, would it conflict with the Montoya grant?

A. Well, I do not know that it would conflict; I did not know of any map before or after that time.

Q. Well, if you commence at the northwest corner and run south until you come on a parallel line with Chico Lake, it would take in the Manzano grant, wouldn't it?

A. No; if you will allow me to explain the way I look on it this map is correct. That is Chico Spring, and if am correct, the Torreon Creek would be somewhere about here [pointing to some unknown place to the reporter], and the Manzano grant would extend as far as Torreon grant, as I understand it, which is here. From this point here up to this creek it would take in this domain here and make a triangle, and, of course, up here to the mountain; but I did not have any map before me at that time. The parties who made the opposition at that time wanted to say that the Baca grant came down here to the Abo, which I found out it did not when I examined the documents there.

Q. How many people were here at Manzano in 1858?

A. Manzano was the largest town in New Mexico in 1858; there must have been thirty-six hundred people there at that time; the whole of that country was very prosperous then; a great drouth has prevailed and the condition of the whole country there has been depopulated since then.

Q. How many people in Torreon when you came there?

A. About eight hundred; all of those towns were very prosperous then; the rains were very seasonable and they raised fine crops.

Q. At the time you were here before the surveyor-general, you were here in the interest of the Government, were you not?

A. No, sir; I was here for the Manzano people; they had asked me to attend to their business for them; I had other reasons.

Q. The statements you made were statements you believed to be true at the time, as far as your knowledge went at the time?

A. Yes, sir.

101 Q. That is all.

Cross-examination by Mr. O'BRIEN:

Q. You say at the time you made those statements that you had never seen the grant papers before?

A. I never had until I came here.

Q. Did you know anybody had discovered the original papers?

A. No, sir; not at the time I gave that testimony.

Q. Was that upon the theory that you believed they had no claim and asserted no claim?

A. Yes, sir; just what I believed about it.

Q. You knew all the people living in that neighborhood, didn't you?

A. Well, no; I knew a good many of them.

Q. Did you know any of the older people living there?

A. Yes, sir.

Q. What did they say about this Baca claim as to its boundaries?

A. This witness, whose testimony I heard read here, I knew him very well, and he often told me about this grant claim of Don Bartolome Baca, and they used to keep people off of it.

Q. Did you know at that time Baca?

A. Yes, sir; I paid him two dollars a day to haul stone to build my house.

Q. Was he one of the grand children of Baca?

A. Yes, sir.

Q. He lived at Tajique on the grant, didn't he?

A. Yes, sir.

Q. At that time you were actually engaged as attorney for the people of Manzano, were you?

A. Yes, sir.

Q. You testified about the Manzano grant before the surveyor-general, didn't you?

A. Yes, sir.

Q. How far from the town of Manzano is ?

A. Probably twenty-five miles.

Q. South?

A. Southeast.

Cross-examination by Mr. REYNOLDS:

Q. At the time you testified before the surveyor-general, had the title papers been found of the Bartolome Baca grant?

A. As I said to you a while ago that I had come here with certain purposes, and I asked Mr. Miller, who was the chief interpreter of the surveyor-general's office, if there was any such grant; that I was in doubt about the title, and he then let me have all the papers in the case, and I looked over them, and I told the Manzano people so at the time.

Q. That was the first time that you ever heard or saw any title papers of the Bartolome Baca grant?

A. Yes, sir; when I examined the papers in the surveyor-general's office.

Q. Did you ever hear any of the heirs of Bartolome Baca speak about any title papers?

A. They only said they had a grant and that they had lost the papers; they could not find the papers.

Q. That is all.

Mr. O'BRIEN. That is all.

A. M. BERGERE, recalled on the part of the plaintiffs, testified on direct examination by Mr. O'Brien as follows:

Q. You saw that alleged certified copy of the will, did you?

A. Yes, sir.

Q. Did you have it in your hand at one time?

A. Yes, sir.

Q. You had seen that paper before?

A. Yes, sir.

Q. When and where?

A. I saw it in Juan Gwynn's office in the latter part of December, 1892, or January, 1893.

Q. 1893?

A. December, 1892, or January, 1893; during the legislature.

Q. What was it there for?

A. Juan Gwynn had offered that will to me for sale.

Q. For how much money?

A. For six hundred dollars. I told Mr. Gwynn I would tell him whether I would take it or not.

Q. You examined it at that time?

A. I did.

Q. What did you do in consequence?

A. I told him I did not want it.

Q. What did you do with it?

A. I gave it back to Mr. Gwynn.

103 Q. Whom did he say he represented in that transaction?

Mr. REYNOLDS. I object to the question as it is immaterial.

No ruling.

A. He told me he represented Mrs. Agapita Ortiz.

Q. She is the present wife of Mr. Nolan, is she?

A. Yes, sir.

Q. Well, now, what did he say further in regard to the paper?

A. He told me she needed the money and that he considered it an essential paper in the case. He wished me to buy it, and I declined to take it.

Q. That is all.

Mr. REYNOLDS. That is all.

At this time an adjournment was taken until to-morrow at ten o'clock a. m., being August 29, 1894.

At the hour of ten o'clock a. m. of August 28th, 1894, the court resumed the further hearing of the above-entitled cause, and the following proceedings were had therein in open court:

WILL M. TIPTON, a witness of lawful age, being produced, sworn, and examined on the part of the Government, testified on direct examination by Mr. Reynolds as follows:

Q. Look at this paper, will you please, sir? [Hands witness certified copy of will of Bartolome Baca, which Mr. Reynolds offered in evidence.]

Mr. Tipton, examine that document with reference to the endorsement legalizing the paper for the years 1833-4, and state, if you can, in whose handwriting it is.

A. Each leaf of this document has the same endorsement upon it with reference to the legalization of the paper, and it is in the handwriting of Francisco Saaracino, and each leaf has attached to it his rubric or scroll. He was at one time a _____ in this Territory, and filled various official positions.

Mr. O'BRIEN. I object to his making any statement he is not asked.

The CHIEF JUSTICE. We will receive it subject to the objection.
103 WITNESS (continuing). From early in the twenties; I think, also, to the American occupation.

Q. Now, examine the signatures, Mr. Tipton, attached to the certificate, and state fully what you know about each of them, as to their genuineness and who the parties were.

Mr. O'BRIEN. I object to the question, as no proper foundation has been laid for it.

The CHIEF JUSTICE. We will receive it subject to the objection.

A. I am not familiar with the signature of Jose Salazar; the signature of Jose Maria y Baca I think I have seen in the archives, but I have not had time to find the signature with which to compare this one, and consequently I can not make any statements as to its genuineness.

Q. Give me your opinion.

Mr. O'BRIEN. I object to the witness stating his opinion, as he has not been qualified to give an opinion.

The CHIEF JUSTICE. He can answer the question.

Q. The signature of J. de Madariaga I have seen before, and I believe this to be genuine. The signature of Miguel Aragon is the signature of the officer who acted as alcalde in the matter of the Cevilleta or La Joya grant, which was suit No. 55 in this court, and which has been confirmed by the court. This signature of Aragon is genuine, and his genuine signatures occur on the papers in the Cevilleta grant. The signature of Jacinto Sanchez is also, in my opinion, genuine, and other signatures of his will be found upon the original muniments in the case of the Manzano grant, which show that at that time he was acting in the capacity of alcalde of the jurisdiction of Tome. Those are all the signatures attached to this document.

Q. Now, as to the body of that document, Mr. Tipton, what will you say?

A. As to the handwriting?

Q. Yes, sir.

105 A. It is in a handwriting that I have frequently seen, and although I have not had time to search for it very much, I am convinced that the same handwriting is found in the archives of the surveyor-general's office; the handwriting I have frequently seen.

Q. Now, returning to the signature of Jose Maria Baca, do you remember, in your examinations in the surveyor-general's office, where he signed his name?

A. No; I do not think I can state that. I believe that I have seen the signature, but I do not recollect where; in fact, I believe I have seen it a

number of times, but I do not remember on what document it is, and consequently I have not been able to find it in the short time that I had to examine this paper.

Q. That is all.

Cross-examination by Mr. O'BRIEN :

Q. How many times have you seen the name of Jose de Madariaga in the papers in the surveyor-general's office?

A. I could not say how many times. I am certain I have seen the signature there, but I do not know how many times.

Q. Can you give any document on which you have seen it?

A. No, sir; I do not think I can.

Q. Can you state in what capacity he signed any document you have seen?

A. No, sir; I cannot.

Q. In what year was the name of Miguel Aragon, whose signature purports to be signed to the Cevilleta or La Joya grant?

A. I do not recollect the year, but I think it was in nineteen and twenty-two.

Q. In what year does the name of Jose Sanchez appear, or purport to be signed to the Manzano grant?

A. I do not recollect the date of that grant; [after looking at paper] September 25th, 1829, is one, and the other, there are two signatures, dated December 24th of the same year.

Q. Are you acquainted, from your examination of the archives, of
106 papers in the archives of the surveyor-general's office of this Territory, what the practice as to changes of justices of the peace and alcaldes, that is, the length of time they served, before a change was made in the office?

A. No, sir; I am not; I have never paid any attention to it.

Q. From your examination, does it appear that the alcaldes must have been changed every year and a new one replaced from what you have learned, or whether or not any one extended over a period of one year?

A. I could not say that; I have never investigated the subject at all.

Q. That is all.

Mr. REYNOLDS. That is all.

Mr. REYNOLDS. That is the Government's case, if your honors please. And this was all the testimony that was introduced in the above-entitled cause.

SANTA FE, NEW MEXICO, October 15th, 1894.

I hereby certify that the above and foregoing sixty (60) pages contain a full, true, and correct transcript of the proceedings had in open court in the above-entitled cause, the same being No. 58, Eloise L. Bergere et al. versus The United States, for the confirmation of "Bartolome Baca grant."

W. J. McPHERSON,
*Special Official Stenographer, by order of said
Court, made August 13th, 1894.*

Testimony taken before the surveyor-general, being in the words and figures as follow, to wit:

In the matter of investigation of private land claim, file No. 123, in the name of Bartolomé Baca for the Torreon tract of land, this cause came on for hearing. Present: Henry M. Atkinson, surveyor-general; David J. Miller, chief clerk, as translator and interpreter, and Samuel Ellison, attorney for grant claimants, when JESUS SAAVEDRA, being first by the surveyor-general duly sworn, on his oath declares:

Question. (By SAMUEL ELLISON, attorney for claimants.) What is your name, age, occupation, and residence?

Answer. My name is Jesus Saavedra; my age is seventy-five years; my occupation is farmer, and my residence is at the town of Manzano, in the county of Valencia, in the Territory of New Mexico.

Q. Are you acquainted with a tract of land known and called the Estancia grant? And if so, please state where it is situate and its boundaries, if you know them.

A. I know such a tract of land. It is situate in the county of Valencia, in the Territory of New Mexico. Its boundaries are on the north the Cibolo Spring, on the east the Cerro del Pedernal, on the south the Cuervo Spring, and on the west the summit of the mountain.

Q. Did you ever live upon this said tract of land? If so, for how long?

A. I lived on the land as a servant in the house of the owner, Bartolomé Baca, from the year 1819 until he died—that is to say, for about eighteen years.

Q. Did said Bartolomé Baca have upon the said tract any improvement, and did he have thereon any live stock?

A. He had there a log house and some corrals, and he had some 40,000 head of sheep, 300 mares, and 900 head of cattle on the premises. The house was occupied by the sons of said Bartolomé Baca, to wit, José Baca, Juan Baca, and Manuel Baca.

Q. Were you present when Bartolomé Baca was placed in possession of the said tract of land? If so, state by whom he was placed in possession.

A. I was present, and the act of possession was executed by one José Garcia de la Mora, alcalde. This was in the year 1819, when I went to live on the tract as stated.

Question. (By JOHN GWYN, representing the heirs of Gervacio Nolan, deceased.) Do you know the springs called the Estancia Springs? If so, please state how far and in what direction they are from the Pedernal Hill.

Answer. I know the springs named, and they are southward from the said Cerro del Pedernal, about five leagues distant.

Q. What is the direction and distance of the Estancia Spring from the Cibolo Spring?

A. They are about fifteen miles to the southward.

Q. What is the distance between the Estancia Springs and the Cuervo Spring?

A. About seventeen or eighteen miles.

Q. Do you know the woods called the Cibolo woods? And if so, please state the direction and distance of that point from the Estancia Springs?

A. I know the place called the Cibolo woods, and it is about fifteen miles from the Estancia Springs to the northward.

Q. What is the distance and direction of the Cerro del Pedernal from the said Cibolo woods?

A. The Cerro del Pedernal is five or six leagues to the eastward of the Cibolo woods.

Q. What is the distance of the mountain west of the Estancia Springs from those springs?

A. It is about seventeen or eighteen miles from those springs to the foot of the mountain. From the foot of the mountain to its top there is probably a distance of eight miles.

Q. How do you know the boundaries of this tract as stated by you?

A. I know them as a servant of said Bartolomé Baca working upon the premises.

Q. Who were present at the time the act of possession was executed for this land as stated by you?

A. One of them was Manuel Alires, of Old Mexico; Nava Nunes, of Sonora; Francisco Galves, a Spaniard; Papas Guerra, of Sonora; José María Marquez, who was the caporal or chief stock herder of Bartolomé Baca; Luis Ríos, a cattle herder; Antonio Marquez, a cattle herder; Juan Luera, a cattle herder; the alcalde, José García de la Mora, and myself. All these persons except myself are now deceased.

Q. What is the distance and direction of the Estancia Springs to the salt lakes?

A. The salt lakes are to the eastward of the Estancia Springs, about two or three miles.

Q. What is the distance and direction of the Estancia Springs
109 to the town of Manzano?

A. The Estancia Springs are about six leagues to the northward from the town of Manzano.

Q. What is the distance and direction of the Crow Spring or Ojo del Cuervo from the town of Manzano?

A. The spring is four miles to the north of the town.

Q. Can you read and write?

A. I can read only. I never could write, but can read a little, both print and manuscript.

Q. In what year did Bartolomé Baca die?

A. I do not know. He died at the little town of San Fernando, near the town of Tomé, in New Mexico, where he was then living.

Question by the SURVEYOR-GENERAL. In what year was the juridical possession given by the alcalde?

Answer. In the year 1819.

Q. In what month?

A. I am not sure whether in the latter part of October or the former of November.

Q. Have you any interest in this grant?

A. I have none.

Q. How many and what towns and about how many inhabitants are upon this tract?

A. There are the towns of Tajique and Torreon, the former having about eighty and the latter about fifty families, and these are about all the inhabitants there are upon the grant.

Q. What is the name of the mountain constituting the west boundary of the tract?

A. It is called by some the Sierra Grande and by some the Sierra del Manzano.

Q. On what part of or at what place upon this tract did Bartolomé Baca live?

A. He resided himself at the little town of San Fernando before mentioned, but he had his sons living upon the grant at the place thereon called the Estancia, where he kept his live stock and had his hacienda or stock farm, the spot (Estancia) being about 15 miles east of Tajique.

Q. In the little town of San Fernando where Baca resided and died upon this tract of the Estancia?

A. It is not, but some 12 or 13 leagues to the west on the Rio 110 del Norte and on the other side of the mountain from the tract.

Q. Did Bartolomé Baca reside upon the tract at any time?

A. He never resided thereon himself, but regularly made visits to his rancho or hacienda there to see his sons and look after his property there.

Q. Was Bartolomé Baca present at the time the alcalde executed possession?

A. He was present to receive the possession.

Q. Have any of Baca's sons resided upon the tract since his death?

A. Manuel and José, his sons, died before he did, and the other son, Juan, died soon afterwards in California, but he lived a while upon the grant after the death of his father.

Q. Is the Estancia you speak of where the sons resided the same place as the Estancia Springs?

A. It is.

Q. Do you know of any other grant covering portions of this Estancia grant and existing at the time the Estancia grant was made?

(Question objected to by Mr. Ellison for claimants for the reason that no grant has been presented in this case covering the whole or any part of the grant now under investigation. Objection overruled by Sur. General.)

A. I know of none.

Q. Do you know of any grant subsequent to the Estancia grant for any portion of the land covered by said Estancia grant?

A. I know of none.

Q. Have you ever known of any grant to the town of Tajique or the town of Torreon?

A. I have never known of any grant to either of those towns.

Redirect examination by Mr. Ellison. Were the sons of Bartolomé Baca you mentioned as occupying the Estancia tract emancipated children, or were they yet under paternal control when they lived upon the tract?

A. Two of the sons, Manuel and Juan, were married, and one, José, was single.

Q. Did you ever hear or know of any claim to the tract of land of the Estancia here in question adverse to that of Bartolomé Baca?

A. I never have.

Q. How old was the single son, José Baca, at the time the act of possession was executed?

111 A. I can not say exactly, but he was born about the close of the eighteenth century.

his
JESUS X SAAVEDRA.
mark.

Subscribed and sworn to before me this Sep. 13, 1878.

HENRY M. ATKINSON,
Surveyor-General.

MIGUEL LUCERO, of lawful age, having been first duly sworn, deposeth and saith:

Question. (By Mr. ELLISON.) State your age, occupation, and place of residence?

Answer. My age is eighty years; my occupation is farmer and stock raiser, and my residence is at the town of Manzano, Valencia County, N. Mexico.

Q. Are you acquainted with a certain tract or grant of land in the county of Valencia, in this Territory, known as the Estancia tract? If so, please state where it is situate and what are its boundaries.

A. I know such a tract. The boundary on the north is the Cibolo Spring, on the east the Pedernal Hill, on the south the Laguna del Cerro, and on the west the Crow Spring. I have known the tract of land described since the year 1816.

Q. Who has been the reputed owner of the land since you have known it?

A. Since the year I mentioned (1816) I have never known for the tract any other owner or claimant than Bartolo Baca.

Q. Did you ever live upon the tract of land in question? If so, for how long?

A. I have always lived at Manzano, but have often been upon the tract, sometimes remaining there during a winter or summer acting as mayor domo of stock for Bartolo Baca. I have frequently rounded up and counted his stock, reporting to him their number, condition, and so forth. I was thus employed about nine years.

Question by Mr. Gwyn. How did you get your information that Bartolomé Baca was the owner of said tract of land, and how did said Baca become the owner thereof?

Answer. I know so because I was present at the time the act of possession was executed to him by the alcalde José García de la Mora, who was authorized to give possession by Facundo Melgares, then governor of New Mexico.

Q. How do you know the boundaries you have stated?

112 A. Because they were shown to me by Bartolo Baca as his boundaries.

Q. Did you ever remain on the tract after the death of said Baca?

A. I was there some eight days about two months after the death of Baca, gathering up the cattle and counting them, which having done I reported their number and condition to Doña Luz Chaves, the surviving widow of the deceased Bartolo Baca, who thereupon placed another mayor domo in charge of the stock. Baca died in the year 1835.

Q. Do you know a place called the Monte del Cibolo, or Cibolo woods, and the spring of the Estancia?

A. I know both places.

Q. In what direction and how far from the Estancia Spring is the Cibolo woods?

A. They are about two leagues apart, and the wood is northwestward from the Estancia Spring.

Q. What is the distance and direction of the Pedernal Hill from the Estancia spring?

A. The Pedernal Hill from the Estancia Spring is about five leagues to the northeast.

Q. In what direction and what distance from the Estancia Spring are the salt lakes?

A. It is about four miles to the east.

Question by the surveyor-general. In what year and what month was Baca put in possession?

Answer. In the year 1822, and I think in the month of April.

Q. Do you know it was this particular tract that he was then placed in possession of? If so, how do you know it?

A. I know it was this identical tract, because I was there present.

Q. Did the alcalde at the time go to the different boundary objects, and what did he do at the time of executing the possession?

A. The alcalde with his finger pointed out the respective boundaries, and afterwards took the cordel, a rope, and measured to them.

Q. Did Bartolomé Baca ever with his family live upon this tract of land?

A. He did not, but lived with his family at San Fernando. He had his stock at the Estancia rancho, however.

Q. Do you know of his claiming any other tract of land at that time and on which he pastured his herds?

A. I do not, except the land he had at San Fernando, the place of his residence, where he also kept some stock. He was rich and had 113 considerable land at San Fernando which he cultivated and whereon he grazed his stock. The land he had at San Fernando he acquired by purchase, as I am aware, having seen him purchase some fields from various individuals, among whom were one Francisco Moya, Santiago Gonzales, José Lucero, these being those vendors I can now remember, though there were others. These purchases were made about the year 1830.

Q. Do you not know that Baca claimed under grant another tract of land about the time this grant was made, or subsequently?

A. I do not know of any other such claim by him.

Q. Have you any interest in this grant?

A. I have none.

Q. Are there any mines or minerals upon this tract?

A. There are none that I am aware of.

Q. What towns and settlements, if any, are upon this grant?

A. There are the towns of Torreon and Tajique.

Q. Under what title do the inhabitants of these towns claim title to their lands?

A. I do not know.

Q. How many inhabitants are in the respective towns named, and how many altogether on the grant?

A. The two towns each have about 40 families, and these are about all the inhabitants there are upon the tract.

MIGUEL X LUCERO,
^{bis}
mark.

Subscribed and sworn to before me this September 13, 1878.

HENRY M. ATKINSON,
Surveyor-General.

MARIANO TORRES, having been by the surveyor-general duly sworn, on his oath declares :

Question. (By Mr. ELLISON.) What is your name, age, occupation, and residence?

Answer. My name is Mariano Torres; my age is seventy years; my occupation is farmer and shoemaker, and my place of residence is at Las Tablas, in the county of Lincoln and Territory of New Mexico.

Q. Are you acquainted with the tract of land known as the Estancia grant? If so, state its boundaries, if you know them, and all you know about it.

Answer. I am, and have known the place all my life. Its boundaries are on the north the Cibolo Spring, on the east the Pedernal Hill, on the south the Crow Spring, and on the west the summit of the mountain.

114 The land has always been known as the property of Bartolomé Baca, now deceased, and it was occupied by him until his death, which occurred many years ago. The land lies in the present county of Valencia and Territory of New Mexico.

Question. (By Mr. GWYN.) Are you acquainted with the points called the Monte del Cibolo and the Estancia Springs? If so, what is their distance apart and their direction one from the other?

Answer. I know the points mentioned, and they are some four or five leagues apart, and the Monte del Cibolo is to the north of the springs.

Q. What is the distance and direction of the salt lakes from the said Estancia Springs?

A. The salt lakes are eastward scarcely two miles from the Estancia Springs.

Q. Are these salt lakes within the limits of the Estancia grant you have described?

A. They are.

Q. What is the distance from Estancia Springs to the Pedernal Hill, and what direction is said hill from said springs?

A. The distance is five leagues, somewhat more or less, and the hill is east of the springs.

Q. What is the direction and the distance of the Crow Spring from the Estancia Springs?

A. The Cuervo or Crow Spring is to the south, and is three leagues distant at furthest.

Q. What is the distance from the Estancia Springs westward to the foot of the mountain?

A. Perhaps some four leagues, and as the mountain is a high one it is at least another league to the mountain summit.

Question. (By the SURVEYOR-GENERAL.) What is the name of the mountain which forms the west boundary?

Answer. They call it the Manzano Mountain.

Q. Where did you live when you first knew this tract of land?

A. At San Fernando, a neighbor of the said Bartolo Baca, where I continued to reside until the year 1846.

Q. How did you become so well acquainted with the boundary calls of this grant?

A. Because in the year 1821 I was a stock herder with Baca's mayor domo, José Maria Marquez, and Baca's sons stated the boundaries to me, and it was understood by all the people at Torreon and the vicinity that 115 the boundaries I have mentioned were the boundaries of this grant, and it was so understood and stated also by the people along the Rio Grande in the Rio Abajo.

Q. Did Bartolomé Baca ever live upon this grant with his family?

A. He did not.

Q. How long were you on this grant as herder?

A. About five or six months, permanently, but at other times I was frequently out at the hacienda or stock ranch, accompanying Baca's sons to the place and remaining some days with them there, Baca residing at his home at San Fernando.

Q. What was the population of Torreon at that time and what is it now?

A. There was then no town there, but only a ranch, and the ranch was Baca's property. The town of Torreon now has a population of more than twenty-five families. Baca, before he died, permitted several families to go and occupy the place (Torreon), and it is in this way that there is now a town at that place, he inviting the families to go and live there on account of the protection their presence there would afford to his interests there against the wild Indians. He erected a torreon, or blockhouse, at the place, whence comes the name Torreon for the town now there. There was then no other rancho or settlement upon the tract.

Q. What other towns, if any, are there upon the Estancia grant?

A. There is upon the tract the town also of Tajique; the town of Chilili is near the west boundary and may be either within or without the grant.

Q. How far is the town of Torreon north of Crow Spring?

A. About one mile.

Q. By what right did Baca claim this land?

A. It was asked for by him and given to him as a grant.

Q. When was Ajaque first settled?

A. I do not remember; it was probably 34 or 36 years ago. It was settled by poor Mexican people, such as small farmers, laborers, and so forth.

Q. Did Bartolomé Baca own any land at San Fernando or at any other place outside of the Estancia grant?

A. He did; he owned lands at Peralta, Joya de Cervilleta, and 116 at Enlamés, and at San Fernando he had a great deal. These lands were held by him by purchase, except a piece of land granted him at San Fernando, I believe, by the Government.

Q. Have you any interest in this claim?

A. I have none.

his
MARIANO X TORRES,
mark.

Subscribed and sworn to before this September 13, 1878.

HENRY M. ATKINSON,
Surveyor-General.

JESUS SAAVEDRA Y ROMERO, being by the surveyor-general first duly sworn, on his oath declares:

Question. (By Mr. CHAVES.) What is your name, age, occupation, and place of residence?

Answer. My name is Jesus Saavedra y Romero; my age is eighty-four years; my occupation is farmer; and my place of residence is Manzano, Valencia County, New Mexico.

Question. Were you present at the ayuntamiento of Tomé at the time that action was taken on the petition of the Manzano people for a grant of land?

(Mr. Catron objected to the question, and objection overruled by surveyor-general.)

A. I was. It was in the year 1829.

Q. What do you know in reference to any surrender or cession of land made by Bartolomé Baca in favor of the people of Manzano?

A. After the boundaries of the Manzano grant were established Don Bartolomé Baca, sympathizing with the people of Manzano, conceded to them all the land within those boundaries with the exception of his (Baca's) cultivable land.

Q. What do you understand to be the north boundary of the Manzano grant?

A. The Torreon Creek.

Question by the surveyor-general. Have you any knowledge of Bartolomé Baca's having surrendered any other portion of the grant in question, or all of it?

Answer. I know of no other surrender by him than that to the people of Manzano.

Q. Then Baca retained his claim to the remainder of the land
117 granted him, did he?

A. Yes, sir.

his ..
JESUS SAAVEDRA X Y ROMERO,
mark.

Sworn to and subscribed before me this January 8, 1879.

HENRY M. ATKINSON,
Surveyor-General.

TERRITORY OF NEW MEXICO, *County of Santa Fe:*

In the matter of private land claim No. 123, filed in the office of the surveyor-general of the Territory of New Mexico, in the name of Bartolomé Baca for a certain tract of land in the county of Valencia, in said Territory, known as the Torreon tract.

Testimony taken in said matter by F. W. Clancy, clerk of the U. S. district court for the first judicial district of said Territory, in pursuance of

authority from Henry M. Atkinson, surveyor-general of said Territory, under date of December 2, 1879, which is hereunto attached:

SANTA FE, N. M., Dec. 3, 1879.

Present, Samuel Ellison and Henry L. Waldo, counsel for claimants; John M. Gwyn, counsel for protestants.

David J. Miller, chief clerk of the surveyor-general's office, in charge of the papers in the case, brought by him from the files of the surveyor-general's office.

CLEMENTE CHAVES, being duly sworn, deposes and says that his name is Clemente Chaves; that he is sixty-nine years of age; that he is by occupation farmer and sheep raiser; that he lives in Tomé, county of Valencia, Territory of New Mexico; that he has lived in the county of Valencia all his life; that he is acquainted with the grant known as the Bartolomé Baca grant, or the Torreon grant; that he first knew this tract of land in 1822; that at that time his father was engaged in pasturing sheep on that side of the mountain, and he (his father) took him to this tract of land; that he was acquainted with Bartolomé Baca from the year 1816 up to the year 1833 or 1834, when he died; that he knows that Bartolomé Baca occupied the land in question, the Torreon grant; that he occupied it with his herds of sheep, cattle, and horses, and that he had corrals there; that he (Baca) was in occupation of it in the year 1822, when he (witness) was there; that he (witness) does not know whether Baca lived on the land in question or not; that Baca lived in San Fernando; that he saw Baca there on the land in question with his peons; that his (witness's) uncle was chief overseer of Baca's lands, and lived at Manzano

with his family; that he saw Baca on the land in question in the 118 month of April, 1822, but does not know whether Baca remained there during the month of April or not; that he heard that Baca went to the tract in question in 1821; that he has no positive recollection of seeing Baca on the land after the year 1822; that the Navajos compelled Baca and others to leave that part of the country and to bring their herds down to the vicinity of Abo Pass; that the Navajos were killing men and stealing stock in that neighborhood; that up to the time of his death Baca was the recognized owner of the grant; that up to the year 1833 Baca had herds upon the grant, but after that time he had none there, they having been destroyed by the Indians; that between 1822 and 1833 the Indians were part of the time peaceable, and at other times they were at war for years together in that part of the country as well as in all parts of the Territory; that Bartolomé Baca had sons and daughters, and that they survived him; that after the death of Baca he never knew of any of his (Baca's) children occupying the land; that he (witness) was senator in the Territorial legislature in 1862, and that he was sheriff of the county of Valencia in 1849 or 1850, and has also been justice of the peace.

Cross-examined by Mr. GWYN:

That he does not know of Baca's having any stock but his own in his charge between the years 1822 and 1833; that Baker had a large sheep herd of his own, and also many horned cattle, as he purchased the calves of the tithes of the church; that it was the custom of the people generally to pasture their stock anywhere they thought best, but that this land in question was recognized as the ranch of Don Bartolomé Baca; that it is

about twelve miles from San Fernando to the grant in question ; that there is a mountain range between San Fernando and the grant of Torreon which has no particular name, but is called the big mountains of Valencia, although there are parts of the range which have their distinctive names ; that San Fernando is on the west side of the mountain on the Rio Grande del Norte ; that Torreon is on the east side of the mountain ; that he does not remember in what year Bartolomé Baca abandoned the grant in question ; that in 1829 Felipe Montoya, Francisco Moya, Antonio Chaves, Juan Cristoval Sanches, and others took possession of El Torreon, leaving the ranch of Bartolomé Baca, where he had his sheep and corrals, to him ; that Baca occupied, as he understood, about three hundred varas in width from east to west and from north to south, he does not know how far, to the boundaries of the grant ; that so far as he knew, Baca claimed no more than three hundred varas ; that these three hundred varas were under cultivation for a distance of about four hundred varas from north to
 119 south ; that he thinks it was in 1829 or in 1830 that Baca had this land under cultivation, and perhaps earlier also ; that the persons he has mentioned, according to his understanding, came in by consent of Bartolomé Baca, who reserved the tract above referred to of three hundred varas to himself for cultivation, and also the balance of the tract.

Adjourned until to-morrow morning at ten o'clock.

SANTA FE, N. M., Dec. 4, 1879.

Met pursuant to adjournment at ten o'clock.

Present, the same as upon yesterday.

Cross-examination of Clemente Chaves by Mr. GWYN resumed :

Witness says that the sons of Bartolomé Baca were José, who died before his father, and Juan and Manuel, who survived him ; that he is informed that Juan died in California and Manuel died in Tomé in 1833 ; that the daughters of Bartolomé Baca were Manuela, who died here in Santa Fe last year ; Rita, who died in Tomé after the death of her father ; Ana Maria, who also died in Tomé, he thinks, about the year 1866, and Lugarda, who resides, he believes, at Puerto de Luna at present ; that all these daughters were married ; that Manuela was married first to Cristoval Torres, and after his death to Miguel Sena, he thinks, the father of Jesus Sena, but witness does not recollect his name with certainty ; that Rita married Gregorio Sanches ; that Ana Maria married Juan Chaves ; that Lugarda married José Luna ; that only one of the husbands of these daughters is now living, and that one is José Luna, unless he has died lately ; that Cristoval Torres, as he has been informed, died in Santa Fe, but he is not certain ; that Torres lived here in Santa Fe at the time of his death ; that Miguel Sena died here in Santa Fe in the year of the revolution, he thinks in 1837, when Perez was killed ; that he believes that Gregorio Sanches died here, but he is not certain, although he lived here ; that Gregorio Sanches was father of Pedro Sanches, the constable here ; that Juan Chaves died in Tomé about the year 1866, to the best of his recollection ; that he is acquainted with the Chico Spring in the county of Valencia, which lies to the south of the Estancia, but that there is another Chico Spring, as he has been informed, elsewhere, of which he has no knowledge ; that he has but a limited knowledge of distances, but he should judge that this Chico Spring is between three and five leagues from the Estancia.

At this point on motion of Mr. Waldo, objection being made thereto by
 120 Mr. Gwyn, the hearing was postponed until two o'clock this after-
 noon in order to obtain an interpreter.

DEC. 4, 1879—2 p. m.

Hearing resumed, pursuant to adjournment.
 Present, the same as in the morning, with the addition of Mr. Luis Felsenthal, who was sworn to act as interpreter.

Cross-examination of Clemente Chaves by Mr. GWYN resumed:

Witness says that Bartolomé Baca died in San Fernandes; that there were two daughters living near Baca at the time of his death; that there was another daughter living here in Santa Fe, but he did not see her at the time of her father's death; that these three daughters and one son, who was then absent in California, were the only children of Bartolomé Baca who were living at the time of his, Baca's, death; that this son who was in California has never, to his knowledge, returned to New Mexico; that Baca's wife, Doña Luz Chaves, took charge of his property after his death; that Baca's wife, Doña Luz, is now dead; she died at San Fernandes, but at what time he does not recollect; that when she died, the late Juan Chaves, her son-in-law, appeared to have charge of her property, as he saw him engaged in looking after the business of the estate, but he does not know positively about this; that of the last will and testament of Bartolomé Baca, his widow, Doña Luz Chaves, took charge, and of that of Doña Luz Chaves, her son-in-law, Juan Chaves, took charge, as much as he knows; that when Juan Chaves died, his wife, Maria Baca, took charge of his effects and property; that she is now dead, and has been for over ten years, he is not very certain, but thinks she died in 1866; that when she died, her son, Bartolomé Chaves, took charge of her effects and property; that Bartolomé Chaves lives at Belen.

Redirect examination by Judge WALDO:

Witness says that when Felipe Montoya and Francisco Moya and others took possession of that land they left to Bartolomé Baca three hundred varas for his own use, to cultivate or to rent out to others for his own use; that those whom he mentioned yesterday, and José María Baca, Eulogio Sais, and others, whom he can not remember, took possession of the remainder of the grant; that Felipe Montoya and Francisco Moya, with others, were the principal claimants of the lands of the grant; that they made application for the land, he thinks, to Antonio Sandoval, who was justice of the first instance; that he yesterday did not say anything yesterday about Bartolomé Baca's occupying the grant in question in the year 1828.

(The foregoing testimony having been read over to the witness, he desires to correct his testimony, on page 4, so that it shall state that he was senator in the legislature in 1864 and 1865, and upon page 7 so that it shall state that of the sons of Bartolomé Baca, José and Manuel died before their father, and that Juan, who went to California, survived him.

CLEMENTE CHAVES.

Subscribed and sworn to before me this 4th day of December, 1879,

F. W. CLANCY, Clerk.

MATIAS SANCHES, being sworn, says that his name is Matias Sanches; that he is seventy-three years old; that he is a laborer by occupation; that he lives in Tajique, county of Valencia, New Mexico; that he has lived there for the last forty years; that he has lived in the county of Valencia all his life; that he was acquainted with Bartolomé Baca in his lifetime; that he is acquainted with the grant known as the grant of El Torreon or the grant of Bartolomé Baca; that he first knew the grant in the year 1823; that he first visited the land of the grant in the year 1822; that at that time he took some animals to El Estancia to turn them over to the overseer of Bartolomé Baca; that the overseer of Baca was there at that time, taking care of the ranch and of the sheep, cattle, and horses of Bartolomé Baca; that he saw Bartolomé Baca there once with his sons, but he heard that he went there often; that he was at the ranch of Baca after 1822; that he went there frequently in the fall to take animals there belonging to Baca, but he can not remember in what years.

Cross-examination by Mr. GWYN:

Witness says that Bartolomé Baca owned the herds which he had at the ranch above referred to; that Baca collected the tithes of the church, but that he does not know what he did with them—he had them there in his herd; that he collected cattle and sheep for the tithes and sent them to his herds; that he does not recollect the exact time when Baca abandoned the grant, but it was when the Indians were very bad, killing his herders and the herders of others; that the people living on the Rio Grande were generally in the habit of herding their cattle and sheep in the section of country where their grant is situated, and when the Indians invaded the country the people with the herds would send word to the towns on the river, and then a number of persons would be selected to go out and fight the Indians, but frequently the Indians would succeed in escaping, taking the stock off with them; that the other persons who herded their stock there had the same right as Bartolomé Baca and even if they had not they would have gone to protect Baca; that of Baca's children four daughters survived their father, and that one of his sons, Juan, went to California before his father's death, and he does not know whether this son died or not; that he does not know how long it was before Baca died that he abandoned the grant; he does not recollect how long it was; that Baca, even after he abandoned the ranch, always kept his herds in the same neighborhood, and when the Indians were away he went back to his ranch; that he does not know how much land Baca claimed in his ranch; that he only knew the ranch, and he did not know how much land Baca had; that he does not know the Chico Spring, for although he has heard it mentioned, he has never been to it; that the Chico Spring which he has heard of is near the salt lake, but that he has never had the curiosity nor opportunity to go there, although he has heard from travelers and others that it was near the salt lake and near the Estancia.

(Objection made by claimants' counsel to all this testimony on the ground that it was hearsay.)

That he heard of this Chico Spring from people who lived in that neighborhood, and who lived on the Rio Abajo, and all who went to the salt lake, as they went to this spring for water, it being on the road to the salt lake; that the people of Valencia County generally pastured their

stock on this grant, in all years, and that they never failed in so doing; that everybody went to that neighborhood even from as far as Albuquerque, to pasture their stock, to water them at La Estancia, and that they had equal rights there.

(Objected to by claimants' counsel on the ground that their witness is not competent to testify as to what the rights of the people were, although he might speak as to their customs.)

That he does not remember who were the first settlers of Torreon; that he lives a little more than half a league from Torreon.

his
MATIAS X SANCHES.
mark.

123 Witness:
LOUIS FELSENTHAL.

Subscribed and sworn to before me this 4th day of December, 1879.
F. W. CLANCY, Clerk.

CLEMENTE CHAVES, being by the surveyor-general duly sworn, on his oath declares:

Question. (By F. M. Barnes as United States attorney.) What is your age, residence, and occupation?

Answer. My age is seventy years, my residence is near Tomé, in the county of Valencia, New Mexico, and my occupation is farmer.

Q. How long have you resided where you now do, and how long in the Territory of New Mexico?

A. I have resided in the Territory since I was born, in 1810, and have resided where I now live since the year 1833, except 3 years I lived at Tajique.

Q. Did you know Bartolomé Baca in his lifetime, and if so how long did you know him, how close did you live to him, and when did he die?

A. I did know him from the time of my earliest recollection until he died in the year 1834. In my early age before I went to Tomé and when I lived at the town of Valencia, Baca lived at San Fernando, and the distance between these two points is about four miles.

Q. Are you acquainted with the land grant known as the Bartolomé Baca grant, now in contest in this case, and if so, how long have you known it, and how close have you lived to it?

A. I know the grant named, and have known it since the year 1819, and lived at the town of Tajique, in the immediate vicinity, three years, the town of Tajique being within a league from the grant boundary.

Q. Did Bartolomé Baca, referred to by you, ever live upon or within the boundaries of said grant?

(Question and answers objected to by claimants' attorneys for the reason that the question called for facts which have already been testified to by this same witness on an examination in this same matter, and he has been

cross-examined upon this same subject, the whole of his testimony
124 with reference to this matter being on file in this case; the Government nor private individuals acting for the Government have no right to recall and examine a witness about any matter about which he testified while on the stand in the same case.)

A. I never saw him there except when he went there seeing about his live stock there.

Q. Where did he have his residence whilst you knew him and where did he die, on or off the grant?

A. At San Fernando, where he died, that place being in the same county the grant is in, but not upon the grant.

Q. Are there any minerals upon the grant in question?

A. I do not know—am not aware of any.

(The foregoing question and this answer objected to by the attorneys for claimants for the reason that it is not pretended that the grant in question is a mineral grant and whether or not there is mineral on the same has no effect upon the validity or invalidity of the title in question; the surveyor general can only inquire into the validity of the original title and has no right to determine whether there is mineral on or off the grant any more than he has to determine whether the Pope wears green clothes or not.)

Q. Do you know anything about other persons than Bartolomé Baca or his heirs living within the grant in question and towns being built thereon other than by Baca or his heirs? If so, name the towns and how long they have been built.

(Question and answer objected to by claimants' attorneys for the reasons given in the objections to then preceding interrogatories to this witness and for the reason that this is an investigation solely for the purpose of determining whether the original grant made to Bartolomé Baca passed the title from the Government of Spain to him, and if it ever was valid the only way in which the Government of the United States could question it would be to show that there had been a legal proceeding under either the Spanish or Mexican Government against this property by way of denunciation and that on such proceedings said Bartolomé Baca had been decreed to have forfeited his rights, and in that case the Government could not even then claim it as wrong, such proceedings must be proven by the official record thereof. If other parties have lived upon the grant in question that would not cause the property to revert to the Government 125 when it had been once separated from the public domain. Such parties might with the lapse of time acquire title by prescription, but the surveyor-general under the law conferring jurisdiction on him in this case has no right to pass upon any such title or any other title besides that of the Government in conflict with the title in question.)

A. I do know of others than Baca and his heirs living upon the grant, and about a town erected on the tract by persons other than by Baca and his heirs, and the town upon the grant is called the town of Torreon, which I was informed was settled by persons by invitation or permission of Baca, and I know of no other town upon the grant.

Adjourned over to nine o'clock tomorrow morning.

NINE O'CLOCK A. M., July 13.

Cross-examined by Mr. BREEDEN and Mr. CATRON for claimants:

Question. Were you acquainted with any of the heirs, children or descendants, of Bartolomé Baca?

Answer. I was.

Q. Were you well acquainted with Bartolomé Baca in his lifetime?

A. I knew him well, personally.

Q. State whether or not, if you know, Bartolomé Baca claimed to be the owner of the property in question in his lifetime, and state, if you know, by virtue of what right or title he claimed.

A. He did claim the property as his own, and claimed under a grant made to him in the year 1819 by Governor Facundo Melgares.

Q. State, if you know, whether the heirs of Bartolomé Baca after his death claimed to be the owners of the property in question, all or any of them.

A. All the heirs so claimed.

Q. State whether or not during the life time of Bartolomé Baca after the year 1819 the property in question was recognized and respected by all persons as the property of Bartolomé Baca.

(The attorney of the United States objects to the foregoing question or any answer the witness may give thereto upon the ground that said question is leading, illegal, and indicates to the witness the desired answer, and is not a cross-examination upon any matter upon which the witness 126 has been examined in chief.)

A. It was.

Q. State, if you know, whether the property in question after the death of Bartolomé Baca and up to the time of the purchase by Otero was recognized and respected by the people generally and by those living thereon and in the vicinity thereof in particular as the property of anyone. And if so, of whom?

(The attorney of the United States objects to all the last foregoing question except the latter part thereof, because the same is leading, illegal, and indicates to the witness the desired answer, is new matter upon which the witness has not been examined in chief, and the answer to said question is also objected to.)

A. It was during that time recognized and respected as the property of the heirs of Bartolomé Baca.

A. During the lifetime of Bartolomé Baca, at how many different places on the property in question did he have ranches?

(The attorney for the U. S. objects to all the foregoing question, because the same is leading and illegal and indicates to the witness the desired answer, is new matter not inquired of in chief, and assumes that Bartolomé Baca really had ranches upon the land in question; and furthermore, the claimants in this case examined said witness upon the matter in his former deposition referred to in the above question.)

A. He had ranchos at the Torreon and at the Estancia; that is, at the Torreon Spring and at the Estancia Spring, these being the only places where I saw such ranchos.

Q. You stated in your direct examination that you knew of other persons than Baca and his heirs living upon the property in question and about the town of Torreon, being erected thereon by other persons than Baca and his heirs. Now state if those other persons did not so live thereon and build said town through and by the direct consent and permission of Bartolomé Baca in his lifetime.

A. I was informed by such persons, many of whose names I could mention, that they were there by consent and permission of said Baca.

Reexamined. (Question by U. S. ATTORNEY.) Give the names, if you can, of the heirs of Bartolomé Baca after his death who claimed the land in question?

Answer. Manuela Baca, Maria Baca, Lugarda Baca, and the heirs of Rita Baca, and Juan Baca, who lived in California when Bartolomé Baca died.

127 Q. When and where did you hear all or any of the persons you say are the heirs of Bartolomé Baca claim to own the land in question? Do you undertake to say, of your own personal knowledge, that said persons in your presence and hearing claimed to own said land, or do you state this fact from the information of others?

A. They told me themselves, that is, at Punta de Agua, José Luna, husband of said Lugurda; at Torreon, Juan Chaves, husband of Maria Baca; at Tajique, Julian Sanchez, son of Rita Baca; and also Mauricio Sanchez, son of Rita Baca, so informed me, as well as others, probably, but I do not now remember. Julian and Mauricio Sanchez and Juan Chaves so informed me about the year 1855, and José Luna so informed me in the year 1866.

Q. Who was present besides yourself when you received the information from the persons you have named as claiming said property?

A. I can not remember now, though I do remember that when José Luna informed me there was present Guadalupe Jaramillo, who lives now at El Pino.

Q. State, if you can, who you ever heard say or admit, other than the heirs of Baca, that the property in question since the death of Bartolomé Baca belonged to the heirs of Bartolomé Baca, and when and where did this conversation take place.

A. Matias Sanchez, in the years 1839, 1840, and 1841, at Tajique; José Sanchez, at the same time and place; José Lorenzo Otero, at the same time and place, now deceased; Antonio Otero, now deceased, at the same time and place; Bernardino Chaves, now deceased, in the year 1837, at Manzano; and sundry and numerous others, too numerous to mention, who informed me the same thing.

Q. Did any of the persons you have named live on the grant in question at the times you say they stated the land belonged to Baca's heirs?

A. Yes, they all lived in the grant and those not deceased still live upon it.

Q. Do you mean to be understood that when you conversed with the persons you have named in reference to said grant they then lived on the grant in question; is it not true that many of them did not in fact live on the grant at the time you had your conversations?

(Objected to by claimants' attorneys on the ground that the question is a double one, embracing two questions in one, and is calculated to confuse the witness, and they insist that each of the questions be propounded to the witness and his answers taken separately.)

There being two questions embraced in the interrogatory, objection was made thereto and the objection was sustained, requiring the questions to be asked the witness separately. The witness in answer to the first question replied:

A. Those who were at Tajique lived upon the grant; Bernardino de Chaves lived at Manzano, and José Luna lived at Punta de Agua, and I understood Tajique to be within and Manzano and Punta de Agua to be without the grant.

In answer to the second question the witness replies:

A. I understand that some of them did and others did not live upon the grant at the time.

Q. How is it that you can recollect the times you had the conversations named? Did you make any memorandum at the times you had these conversations?

A. I took no memoranda, but I recollect the times from the fact that I lived at Tajique at the times mentioned, and was cultivating land at Manzano at the time referred to as to Bernardino Chaves, and am cultivating there now. The Bernardino Chaves mentioned had charge of Bartolomé Baca's stock raising and other business and interests at the hacienda there.

Q. Are you acquainted with the lines or boundaries of the grant in question? Did you ever trace them? If so, when?

A. Yes; I am acquainted with them. The boundaries I have never traced out on the ground, but I have often seen and traveled over and across them and know them well.

Q. Were you present at any sale, contract, or agreement between the heirs of Bartolomé Baca and Manuel A. Otero to the grant in question?

(Question and answer objected to by claimants' attorneys for the reason that it is irrelevant and impertinent, as it is new matter sought to be brought out on the reexamination, but has no reference whatever to any evidence brought out on the cross-examination. The surveyor-general has no authority to examine into or investigate any facts with reference to the purchase by Otero, even if they might be pertinent or applicable to this case.)

A. I was not.

CLEMENTE CHAVES.

Sworn to and subscribed before me this July 13, 1880.

HENRY M. ATKINSON,
Surveyor-General.

Will of Bartolome Baca.

[Good for seal third for the years 1833 and '34. Rubric.]

In the name of the Almighty God, amen:

I, citizen Bartolome Baca, a native of the jurisdiction of Belen, and residing at the place of San Fernando, jurisdiction of the Pure and Spotless Concepcion de Tome, a legitimate child of the lawful marriage of Don Domingo Baca and Dona Maria Antonio Montoya, deceased, who were also natives of Belen, being, by devine mercy, seriously ill, but with my full and complete natural faculties, memory, and understanding, believing and confessing, as I firmly believe and confess, the most high marvellous mystery of the most blessed Trinity, Father, Son, and Holy Ghost, these persons who, although really distinct, have the same attributes and are the one only true God and one essence and substance, and all the other mysteries and sacraments which our Mother, the Holy Roman Catholic Apostolic Church, holds, believes, and confesses, in which true faith and belief I have lived, do live, and declare I will live and die, as a faithful Christian Catholic, taking for my mediator and protector the always virgin and immaculate Queen of the Angels, most Holy Mary, mother of God and our Lord, my Holy Guardian Angel, those of my name and devotion

and others of the celestial court, to beseech our Lord and Redeemer, Jesus Christ, through the benevolence of His most precious life, passion, and death, to forgive all my faults and take my soul to enjoy His most blessed presence; fearful of death, which is natural and inevitable to every human creature and the hour of which is uncertain, in order to be prepared with testamentary instructions when it arrives; to determine with mature wisdom and reflection everything concerning the conciliation of my conscience; to avoid with clearness the doubts and contentions that may arise after my death in the absence thereof; and not having at this time any temporal care that prevents me from earnestly asking of God the forgiveness I hope for of

[Good for seal third for the years 1833 and '34. Rubric.]

130 my sins, I execute, make, and dictate my will in the following form:

First, I commend my soul to God, our Lord, who from nothing created it, and my body to the earth from which it was made, which, when a corpse, I direct be shrouded in the habit of our serafic father, San Francisco, and to be buried in the church of the Pure and Spotless Concepcion de Tome.

It is my will that my burial be humble and with mass with the body present. I also declare that I am lawfully married, in facie ecclesiae, to Dona Maria de la Luz Chaves, from which marriage we have had and have, as our legitimate children, Maria Rita, Manuela Antonia, Maria Manuela, Juan, Manuel, and Maria Lugarda. I also declare as my property the house where I live, containing seventeen serviceable and three unserviceable rooms, with a chapel where the holy sacrifice of private mass is celebrated, adorned with thirty-five images in sculpture and pictures, a pulpit, twenty-four mirrors, a censer with its boot of silver, five chasubles with their corresponding accessories, two capes, two albs, two sashes, six altar draperies, two missals, one chalice with its accessories, two cruettes with their salvers, eight metal candlesticks, and its vestry with a chest in which the ornaments are kept. I also declare as my property the utensils of my house, consisting of eight mirrors, eleven silver plates, twelve spoons, and eight forks also of silver, three copper kettles, two large chests, four carts with trappings, five trunks, three hampers, one silver vase and a tankard of the same, one wardrobe, one carriage, four serviceable and three unserviceable wagons, one flask case with twelve flasks, eight hoes, three axes, two adzes, three bars of iron, two American saws, one thousand six hundred dollars in money, one copper boiler. I also declare as my property nine small houses in this place of San Fernando, four small houses at El Cerro, the farming land I have at this place and at El Cerro, with the 131 purchase I have in this said sitio, which is coterminous with the sitio of Valencia. I also declare as my property a house I have in the sitio of the Peralta, a broken field, and an interest in the

[Good for seal third for the years 1833 and '34. Rubric.]

said sitio. I also declare as my property a house and lands in the sitio of the Aragons, an interest in said sitio which I bought of the late Jose Aragon.

I also declare as my property a ranch which I bought of Don Luciano Garcia on the other side, in front of Bernalillo, which consists of a house

and lands, the value of which is one thousand dollars, which I gave for it. I also declare as my property two ranches in the sitio of Tome, with its houses, which I purchased of Jose Manual Apodaca and Andres Mirabal, and two large fields purchased of Felipe Montoya. I also declare as my property two fields and an interest in the sitio of Las Enlamas, which I purchased of the late Antonio Jose Baca. I also declare as my property that which I have in a room in my house set apart as a store, and in which there are forty-five pieces of calico, domestic and muslin. I also declare as my property two houses I have in La Joya de Sevilleta, together with their share of lands in the sitio. I also declare as my property a house I have in the village of El Paso del Rio del Norte, with its vineyard and corresponding land, as appears from the document executed for me and which is in my possession. I also declare as my property the land I have in the sitio of Sansal, which Juan Antonio Baca paid me and which was received by Tomas Sanchez. I also declare as my property the broken lands I have in the sitio of Mansano and my interest therein, together with the will under the management of Jose Antonio Torres. I also declare as my property a mill I have in this place of San Fernando. I also declare as my property four hundred and fifty head of cattle from the brand up, seven thousand head of small stock, eight hundred ewes
132 of mine which Don Francisco Ortiz has on shares, one thousand ewes which Gonzalez, who resides at Seboyeta, has on shares. I also declare as my property forty broken mules, a little more or less, twenty-four aparejos, with accessories, one hundred horses between unbroken and broken, twenty-four young mules one and two years old, two asses. I also declare th't Don Mateo Sandoval owes me

[Good for seal third for the years 1833 and '34. Rubric.]

four hundred and thirty dollars in money, which I order collected. I also declare that, according to the cash book in my use and the obligations that have been made to me, collections be made of all the individuals who owe me and are not credited on their accounts and obligations. I also declare that I owe the house of the late Francisco Chaves four thousand and odd dollars in money and five thousand ewes I had from said house on shares. I order that it be paid. I also declare that I owe as tithes at El Paso del Norte four thousand dollars. This is being paid, and what is found not to have been paid, I order that it be paid. I also declare that I owe to Don Santiago Arichavala for one thousand two hundred sheep. O order that they be paid for. I also declare that I owe Don Rafael Ortiz for six hundred sheep for the year eighteen hundred and thirty-four. I order that they be paid for. I also declare that I owe my stepson, Jose Luna, for five hundred sheep. I also declare that Don Ricardo Ester owes me four thousand five hundred dollars. I order that it be collected. I also declare that Don Ignacio de la Campa, who lives in Sonora, owes me one thousand five hundred and fifty-six dollars, two reals. I order that it be collected. I also declare that Don Alejandro Legren owes me four hundred dollars, two hundred of which appear in an obligation he executed for me, and for the other two hundred he made no obligation. I order that it be collected. I also declare as my property a tract of land
133 in the sitio of the Lunas, which Antonio Jose Padilla paid me. I also declare that Ruybali de Savinal owes me for three hundred

ewes. I order that it be collected. I also declare that Vicente Provencio, who resides at Oposura, in the State of Sonora, owes me five hundred dollars in money. I order that it be collected. I also declare that all the servants of my house, according to their accounts, are obligated to earn them in the house, even to the last real, and he who does not wish to serve shall pay in full. I also declare as my property forty she goats, which are in the possession of Gertrudis Montoya, who resides in Belen. I also declare as my property one iron cot and two bells.

[Good for seal third for the years 1833 and '34. Rubrie.]

I also declare as my property a cross with its iron weather vane, which is used on the belfry. I also declare that I leave to my wife, Dona Maria de la Luz Chaves, my dwelling and all the household furniture within the doors thereof, it being observed that I have given hous's to all my children; to Manuela the house I have in Santa Fe, with its corresponding land, and to all the others I have also given houses in this place of San Fernando, with their respective lands. I also declare that I leave to my wife, Maria de la Luz Chaves, the land enclosed by a wall I have in this place and the orchard.

In order to carry out all the wishes this will contains and which the codicil will contain, in case I leave one, I appoint as my executor, in the first place, my wife, Maria de la Luz Chaves; in the second, Don Jacinto Sanchez, and in the third, Don Enrique Luna, and each one in solidum, and I give them ample power to take possession of my property as soon as I die, and to pay all I owe, and that their collection be lawful and real, and that they make it with the legality their good conscience may indicate to them, which charge shall continue for the legal year and as much more time as they may need, since I extend it. And after it is

134 completed and everything paid, in the sale of my property, furniture, real property, rights and shares, present and future, I constitute as my sole and universal heirs my wife, Dona Maria de la Luz Chaves, and my said children, Maria Rita, Manuela Antonia, Maria Manuela, Juan Clemente, Manuel, and Maria Lugarda, who, after paying all I owe (except what I have given them), shall make a lump of what is left, the half for my said wife and the other half to be shared in equal parts by my children that they may enjoy it with the blessing of God and my own. And by these presents I revoke and cancel the wills and other testamentary provisions I may have made heretofore

[Good for seal this for the years 1833 and '34. Rubrie.]

in writing, verbally, or in any other manner, so that none of them has any value or judicial or extrajudicial effect, except this will and said codicil, which I desire and direct be considered and held as such and as my last deliberate wish, in the manner and form most in accord with the law.

Thus I execute and sign it before the acting alcalde, Don Juan Jose Sanchez, in the absence of the proprietary alcalde and his attending witnesses, in this place of San Fernando, jurisdiction of Tome, on the second day of the month of March, eighteen hundred and thirty-three, and for the greater force and validity of this will and of my last wishes I request said alcalde to authenticate it, and I, the said alcalde, stated that I authen-

ticated it, as I formally authenticated it and in accordance with the powers vested in me, signing it with the patient and my attending witnesses, and on this common paper, as there is none of the corresponding seal in this jurisdiction, the parties in interest being obligated to aggregate the canceled paper, to all of which I certify.

JUAN JOSE SANCHES.
BARTOLOME BACA.

I was a witness.

MIGUEL ARAGON.

135 I was a witness.

JOAQUIN ALARID.

This is a true and lawful testimony taken from its original, to which I refer, which ought to remain in the archives of this jurisdiction, and the first and second executors saw it copied, corrected, and amended, and they signed with me and those in my attendance, with whom I act and to which I certify, in this jurisdiction of Tome, to-day, the 23rd of May, 1834.

Between lines out valid.

JOSE SALAZAR. [RUBRIC.]

Witness :

JOSE MARIA BACA. [RUBRIC.]

MIGUEL ARAGON. [RUBRIC.]

JACINTO SANCHES. [RUBRIC.]

Witness :

F. DE MADARIAGA. [RUBRIC.]

Fees, \$8, without the paper.

[RUBRIC.]

Translated by Henry O. Flipper, spec. agt., etc.

136 *Defendant's Exhibit—Nerio Antonio Montoya grant.*

To the Honorable the Corporation of Tome:

I, citizen Nerio Antonio Montoya, resident of the town of Valencia, appear with the greatest respect before your honorable body and state, that finding myself at the said place, Valencia, with only the family relations of my wife, and not knowing what may fall to her share, the said tract of land being owned among them, and having no confidence that, even should the same be divided out, any considerable portion would come to me on which to depend for the support of the large family by which I am surrounded, the land being small in quantity and the holders being numerous, under this apprehension I find myself under the imperious necessity of applying to your honorable body, that you be pleased to take this my situation in consideration, and that actuated by your well-known generosity you may further manifest the same by appending hereto your report to the most excellent deputation, so that that body in view thereof, and of what I myself represent, may, should it deem proper to do so, direct that I be placed in possession from the Central Spring to the rancheria, about half a league in area along the cañon, and distant about one league from the Manzano grant, which tract is uncultivated, and in my opinion the grant would not be injurious to the inhabitants within this jurisdiction in

regard to pasturing and water for their live stock, owing to the barrenness of the cañon in which the said tract lies and the quantity of water it contains, and it is valuable only for cultivation on a small scale, for which purpose only I desire it, I having planted there last year, and the crop, though I could not tend it well, owing to the great distance, did not fail to relieve me with its limited production. For all which reasons I humbly and submissively ask and pray your honorable body to be pleased to do for me as I request, for I shall thereby receive favor and justice. I declare not to act in dissimulation, and whatever is necessary, &c.

137 This is written on this common paper, there being no paper of the proper stamp in this jurisdiction; the obligation to attach it remaining upon me.

Valencia, February 28, 1831.

NERIO ANTONIO MONTOLLA.

REPORT OF THE CORPORATION COUNCIL.

TOME, March 19, 1831.

This honorable council being convinced by the strong reasons set forth by the petitioner, and no injury resulting, but rather considerable advantage to the interests and encouragement of agriculture, his petition will go before the most excellent territorial deputation, which, as the authority competent, may accede to the donation of the land prayed for by the said petitioner without injuring the pastures and watering places for the passers by.

JUAN BACA.

MIGUEL DE OLONA,

Member and Secretary.

DECREE OF THE MOST EXCELLENT DEPUTATION, BOOK I, FOLIO 2.

SANTA FE, November 12, 1831.

The honorable the deputation of this Territory having received the report of the constitutional council of Tome appended to this petition, has resolved in this day's session to grant the land prayed for by the petitioner, charging the alcalde of said jurisdiction to execute the document that will secure the grantee in the grant hereby made to him.

ABREAU, *Secretary.*

ALCALDE'S DOCUMENT.

The citizen Miguel de Olona, second alderman of this honorable council of Tome, and present alcalde of the same jurisdiction, &c.

In obedience to the decree of the most excellent deputation of this 138 Territory, made under date of November 12th of the current year, on the margin of the petition which, under date of February 28, the citizen Nerio Antonio Montoya, resident of this said jurisdiction, presented to this honorable council, and on which petition is recorded the report made by this council, in accordance with which report its excellency has deemed it proper to accede to the petition of Montoya, granting him full and formal possession of the tract he prayed for on the opposite side of the mountain at the Central Spring, and from the latter to the rancheria,

which is according to the petition of the grantee; and in order to execute title to and secure to him as his own property the said land, I, the said alcalde, in pursuance of the order of its excellency, and by virtue of the power conferred on me by law, do execute to him this document, acting with attending witnesses for want of a notary, there being none such as the law requires, and on this common paper on account of the well-known lack of stamped paper, the grantee standing obligated to attach the proper revenue stamp, Montoya's original petition remaining in the meantime among the archives of this office; and the said Montoya, whenever he may choose or think best to do may notify me to proceed with him to the locality to place him in possession of the property granted him, with all the customary formality, to the end that with full control he may enjoy for himself, his children, and successors, the land which in the name of the nation is granted to him.

And for full security I signed and executed this on the seventh day of the month of December, one thousand eight hundred and thirty-one, with my attending witnesses as aforesaid; to all of which I certify.

MIGUEL DE OLONA.

Attending: ISIDRO SAMORA.

Attending: ANTONIO BARELA.

POSSESSION.

On the twelfth day of the month of December, one thousand 139 eight hundred and thirty-one, I, second alderman of this honorable council and present alcalde of this jurisdiction of Tome, in compliance with the provision made by this most excellent deputation of this Territory, and the notification given me by the citizen Nerio Antonio Montoya, proceeded with him to the tract of land granted to him, and standing thereupon, and no injury whatever resulting, I designated to the said Montoya the following boundaries: On the east, the so called Apache Rancheria; on the west, the Central Spring; on the north, the highest part of the Cañon Mountain ridge, the same at which the spring is situated; and on the south, the commencement of the little valley of the Cuerbo up to a spring situated therein, commonly called the Cubero Spring; and I notified him of the conditions expressed in the report relative to pastures and watering places for the use of passers-by, directing him at the same time to establish firm and permanent landmarks; and in confirmation of the whole I took him by the hand and led him over said land, and he plucked up grass, cast stones toward the four cardinal points, shouting aloud "Blessed be the nation" once and thrice in sign of true, peaceable, and unopposed possession.

And that it may so appear, I, said alderman and present alcalde, signed this document, with my attending witnesses, as aforesaid, to which I certify:

MIGUEL DE OLONA.

Attending: JUAN JOSIE DE MADARIAGA.

Attending: ANTONIO BARELA.

At Corrales, county of Bernalillo, on the 2nd day of the month of October, 1848, before me, Fernando Aragon, alcalde of the said county,

appeared Nerio Montoya, resident of the county of Valencia, and Juan Perea, resident of Bernalillo, and both being present, the former declared that he conveys all his right in and control over this document to 140 the said Perea and his sister, Dolores Perea, to *to* the end that henceforth they may be the proprietors thereof, making legal use of this title as their own property, which it is, together with a lot of land (*huerta*) containing four hundred and seventy-four grape vines, three rooms, built of wood, for dwellings, eighty-six peach and apple fruit trees, and the wall surrounding the grape patch, with the privilege that should it fall down they may rebuild it from the adjoining ground; also the document and right to the *acequia* irrigating said patch, nineteen jars (*frascos*) of brandy, a land claim (*aucion*) the vendor has purchased from Manuel Sedio at the place Las Peraltas, and the three rooms aforesaid he conveys, together with the lot and the eaves-drippings (*chorreras*) belonging thereto, and the vendor declares that all that is mentioned in this instrument he conveys (*esede*) to the said vendees for four thousand five hundred and eighty-one head of sheep and goats (*ganado menor*), for which, as well also as for some merchandise, he was in debt to them, for which property (*cantidad*, the said vendees acknowledge themselves paid and satisfied the said indebtedness.

Thus have the parties contracted before (me), and I certify thereto, with attending witnesses, to all of which I certify,

FERNANDO ARAGON, *Aleahh.*
NERIO ANTONIO MONTOYA.

Attending: MARCOS S. VERGARA.

Attending: JUAN BIJIL.

OFFICE OF THE POLITICAL CHIEF OF NEW MEXICO.

By your official communication of the 20th instant I am advised of your having executed the decree of the most excellent deputation, granted to the citizen Nerio Antonio Montoya a tract of land.

But in regard to the inquiry you make of me as to how much 141 your fee should be, I inform you that I am ignorant in the premises, and that you may, if you choose to do so, put the question to the assessor (*asesor*), who is the officer to whom it belongs to advise the justices of first instance in such cases.

God and liberty.

Santa Fe, December 22nd, 1831.

JOSE ANTONIO CHAVEZ.

To Alderman MIGUEL OLONA.

142 *Defendant's Exhibit.—Antonio Sandoval or Estancia grant.*

[Translation of title papers.]

A, No. 1.

[Third seal (seal), one dollar.]

Years one thousand eight hundred and forty-four and one thousand eight hundred and forty-five.

MOST EXCELLENT GOVERNOR: I, citizen Antonio Sandoval, resident of the town of *of* Albuquerque, before the upright justice of your excel-

lency, in due form appear and state, sir, that, considering that it is now the number of thirty years and more that I am rendering service to the country, as well with my person as with my property, as up to this time is clear and evident, without having in any way interposed the least objection thereto, and without having on that account been paid any compensation for my services; wherefore, in view of what is set forth, I proceed, if I am justified in doing so, to pray that your excellency in your benevolence be pleased, in the name of the supreme authority of the Mexican nation, to do me the favor and grace to grant me in possession integrum the salt lakes tract, assigning as boundaries toward the north one league from the Berrendo Spring, the said Berrendo Spring being within the possession, and toward the south from the salt lakes another league, on the east the little hills of the Pedernal, and on the west the water of the Mestemas. It is understood that I make this petition because the land is vacant and in a condition of mortmain, as to do so is without prejudice to any third party, and because I have not where to pasture my live stock, which is considerable. For this reason it is imperative for me to do so, and if I deserve the favor let it be done in compensation for the services I have referred to, and for the same reason I ask your excellency that if this grant be made to me it be free and exempt from tax. In conclusion of all which I humbly ask and pray your excellency for the sake of justice to accede to this my prayer, whereby I will receive the favor I seek. I declare that I act not in dissimulation in the premises, covenant good faith to pay costs, and do whatever be necessary, &c.

Albuquerque, December 5, 1845.

ANTONIO SANDOVAL.

SANTA FE, December 7, 1845.

This Government being convinced of the valuable services Don Antonio Sandoval has rendered and is now rendering the country, as well during the time to which he refers as also during the six years he served administering the prefecture of the second district with the salary of \$1,500, of which not even a half real has been paid to him, the sum due him amounting to \$9,000, and the statements in this petition being true, I do, in exercise of the power in me vested by the laws, and also in consideration of all the premises, and as a just title acquired, make to him the grant for the land he solicits, with all the dimensions and pasture lands he asks, that he may enjoy the same in the name of the supreme government of the Mexican nation, and under my concession free and exempt from all tax or tribute.

MANUEL ARMJO.

B.

[Seal fourth (seal), one-fourth real.]

For the years one thousand eight hundred and forty and one thousand eight hundred and forty-one.

Qualified for the years 1844 and 1845. [Rubric.]

I, Jose Serafin Ramirez v Casanobe, comptroller of the departmental treasury of New Mexico and acting treasurer of the same, do hereby certify, at the request of Antonio Sandoval, that during the period of forty years, as appears from the records of the books of the treasury, Don

Antonio has been serving the nation as a military and civil officer. It also appears that he has loaned numerous sums of money to the treasury of the nation without receiving one half real interest, and that there are now large sums due him, as appears from the entries in this office and the evidences in possession of the party interested, on account of salaries and loans.

And in testimony thereof I issue this certificate at Santa Fe this 6th day of December, 1845.

JOSE SERAFIN RAMIREZ,

143

C, No. 2.

At this place, La Estancia, on the fifteenth day of the month of December, in the present year one thousand eight hundred and forty-five, I, Jose Baca y Ortiz, justice of the peace of Real del Oro, in obedience to the decree of the most excellent governor, concerning the grant of land he makes exempt and free from all tribute, proceeded to the afo ementioned land, in company with my two attending witnesses, to mark the limits and boundaries which were granted to the petitioner, and having caused the citizen Juan Antonio Aragon, representing the person of Antonio Sandoval to be present, I exhibited to him the petition the latter had made, and stated that, for the greater security of his interests, he should maintain a force of men with good arms, to be ready for an emergency; and he being fully informed of the above, I took him by the hand and declared in plain and intelligible words that, in the name of the sovereign Congress of the Union, the aforesaid land was given to him in possession, which he received quietly and peaceably without any objection, and he cast stones, plucked up grass, and shouted with joy, "Long live the sovereign Congress of the Mexican nation;" wherupon he was shown the boundaries, which are: On the north, one league from the Bernendo Spring, the said spring being included in the possession; on the south, one league from the salt lakes, the said lakes also being within; on the east, the little hills of the Pederna, with its range; and on the west, the water of the Mestenas; wherefore, the party interested being satisfied and content with the favor and concession which has been made to him, I did, in testimony thereof in all time to come, execute to him the present document of possession, that it may serve him as formal title, and for its greater validity I interpose the authority conferred upon me by law, signing the same on said day, month, and year, with my attending witnesses, for lack of a notary public, there being none, and on this common paper, for want of that having the proper seal; the party, however, binding himself to attach it at his expense. To all of which I certify.

JOSE BACA,

Attending: JOAQN. TOMOHANO.

Attending: PABLO DELGADO.

Recorded in book, letter B, pages 166 and 167, to which I certify that it may so appear.

DONACIANO VIGIL,
Recorder.

Defendant's Exhibit—Manzano Grant.

[Grant translation.]

To the Illustrious Corporation of Tome:

Citizen Jose Manuel Trujillo, for himself and in the name of the settlers of Manzano whose names appear on the margin, with due respect represent to your excellencies: That not having the deed of possession to the said town in which they have settled, and the site of said town not being known to be owned by no one, we request your excellency to be pleased to grant us the possession thereof, giving us the land which we are now occupying; giving us as boundaries from north to south, from Torreon to the old mission of Abo, and from east to west, from the table-lands called Jamanes to the mountain; all of which is to be for pasture grounds and other common purposes, cross-roads and other uses necessary for every town established upon all the solid bases of common and private property, and inhabited by the same; requesting further, as a condition for any of the above-mentioned individuals, or any others to be admitted in future without injury to the former, to the new town of Manzano, to acquire legal property therein; that he shall construct a regular terrace house of adobe in the square where the chapel is to be constructed (for which permission has been granted us), and he shall bring with him his property of every description, contribute to all community labor, procure the increase and prosperity of the town, defending with arms the firesides of his town to the fullest extent against any domestic or foreign enemy, and finally that the person who will not reside in said town with the family belonging to him, and who shall remove to another settlement, shall lose all right he may have acquired to his property.

In view of what has been above stated we all, and each of us,
145 request that your excellencies will be pleased, through a committce
of your body, to establish the boundaries of the town at the points
above set forth, which being done, that we be compelled to establish the
proper monuments for the information of the settlers and the public within
the entire territory, granting us the said land in the name of the Supreme
Government of the Mexican Nation, to which Government we belong,
referring thereupon this our petition to the most excellent deputation, in
order that the proper approval may issue therefrom.

Tome, September 22, 1829.

JOSE MANUEL TRUJILLO.

The corporation of the jurisdiction of Tome, in view of the foregoing petition, in session of to-day, has resolved to refer said petition to the most excellent territorial deputation, with the remark that this corporation knows of no obstacle against granting to the petitioners the land they solicit, the only objection found being in regard to the arable land therein situated belonging to retired Lieutenant-Colonel Bartolome Baca, who will be satisfied with the land which, as a new settler, he may acquire, together with that which he has purchased from other settlers, promising that although he will not establish his residence there, he will cultivate and improve the lands which may be recognized as his.

Tome, September 25, 1829.

JACINTO SANCHEZ,
JUAN BACA,
Acting Secretary.

Office of the secretary of the most excellent territorial deputation of New Mexico.

In session of the 28th of November last past, this deputation
146 resolved that the following decree be added to the foregoing proceedings:

"By virtue of the foregoing report of the corporation of Tome, the justice of that jurisdiction will place the petitioners in possession of the land they ask for, giving to each one the tillable land he may be able to cultivate, leaving the remainder for such other individuals who in the future may establish themselves therein, limiting the boundaries to one league in each direction."

JOSE ANTONIO CHAVEZ, President,
RAMON ABREU, Secretary.

MANZANO, December 24, 1829.

In compliance with the directions of the most excellent territorial deputation, as hereinbefore expres'd, I proceeded to this settlement of Manzano on the day of the date, and all the inhabitants thereof being assembled, the decree was read to them for their information, and thereupon I proceeded to give them possession of the aforesaid site in the name of the nation, establishing as the center of said land the "Alto del pino de la Virgen" (height of the pine of the Virgin), which is situated in the middle of the fields, the settlers having asked for that point, and having measured their league in the direction of the four cardinal points of the compass, as directed by the most excellent deputation in their foregoing decree, their boundaries were given to them as follows: On the north two solitary cedar trees in the canon del alto, called the canon of the deceased Ulas; on the west the summit of the hill, which is on the western side of the upper (torn); on the south the rise which is on the opposite side of the

Gulf of Cienega; on the east the mesa Colorado, called the rancho
147 of Don Pedro de la Torre, and having placed them in possession

I proceeded to the head of the tillable land, and having intimated to them that I was going to divide out their lands by lot in accordance with the foregoing decree, they unanimously answered requesting me to do them the honor to let them retain the land they had already improved, which request I deemed proper to comply with in order that no one should be dissatisfied.

In testimony whereof I signed with my attending witnesses, to which I certify.

JACINTO SANCHEZ.

Attending: **JUAN JOSE SANCHEZ.**

Attending: **NERIO ANTONIO MONTOYA.**

Settlers of Manzano:

Jose Manuel Trujillo,
Bernardino Chavez,
Joaquin Sanchez,
Antonio Torres,
Diego Gonzalez,
Jose Antonio Torrez.

Juan Archuleta.
Jose Leon Perea,
Juan de Herrera,
Jose Manuel Garcia,
Francisco Garcia,
Francisco Herrera.

Jose Maria Marques.
 Juan Marquez.
 Mariano Torrez.
 Gertrudis Benavideo.
 Santos Marquez.
 Tomas Sanchez.
 Jose Cisneros.
 Ramon Cisneros.
 Estanislao Otero.
 Jose Maria Perea.
 Juan Perea.
 Jose de Jesus Baldonado.
 Antonio Mirabal.
 Anastacio Mirabal.
 Juan Chavez.
 Juan Gonzales, jr.
 Juan Estaban Chavez.
 Faustin Sanchez.
 Francisco Velasquez.
 Juan Velasquez.
 Antonio Candelaria.
 Manuel Sena.
 Antonio Jose Garcia.
 Matias Montoya.
 Antonio Torres.
 Rejes Torres.
 Amounting to 61.

Further :

148	Jose Sanchez.	Julian Sanchez.
	Pedro Chaves.	Miguel Archuleta.
	Rafael Montoya.	Domingo Sanchez.
	Eugenio Cordova.	Francisco Padilla.

New settlers :

Pablo Gallegos.
 Alfonso Jaramillo.
 Jose de Jesus Maldonado.
 Nepomuceno Luero.
 Jose Rafael Chaves.
 Juan Luera.
 Luis Romero.
 Manuel Sallas.
 Francisco Sena.
 Marcos Sedillo.
 Juan Perea.
 Manuel Trajillo.
 Ygnacio Sedillo.
 Pedro Sena.
 Jesus Sena.
 Trinidad Salas.

Nicolas Salasar.
 Rafael Montoya.
 Matilde Montoya.
 Jesus Saavedra.
 Ana Maria Barela.
 Francisco Sedillo.
 Juan Sedillo.
 Jose Sedillo.
 Rafael Sedillo.
 Alfonso Sedillo.
 Juana Montano.
 Diego Sanchez.
 Jose Mirabal.
 Juan Castillo.
 Jose Dolores Jaramillo.
 Miguel Chavez.
 Eulogia Saez.
 Nerio Montoya.
 Miguel Lueero.
 Domingo Lueero.
 Jose Maria Gonzales.
 Jose Antonio Montoya.
 Francisco Torres.
 Guadalupe Perea.
 Juana Peralta.

Juan de Jesus Zamora.
 Jose Torres.
 Antonio Jose Otero.
 Manuel Chaves.
 Jose Sanchez y Cueva.
 Martin Gurule.
 Tiburcio Sanchez.
 Juan de Jesus Maldonado.
 Pablo Padillo.
 Cepriano Torres.
 Nicolas Torres.
 Bian Torres.
 Jose Sanchez y Torres.
 Lorenzo Torres.
 Cruz Flores.
 Manuel Sanchez y Chaves.

[Seal third (seal), two reals.]

For the years one thousand eight hundred and forty and one thousand eight hundred and forty-one.

In this jurisdiction of Valencia on the fifteenth day of February, in the year one thousand eight hundred and forty-one, before me, citizen Vicente Otero, substitute justice of the peace of said jurisdiction, and my attending witnesses, appeared twenty-seven individuals of this same jurisdiction, who stated that having no land to cultivate to procure the means of supporting their families they have determined to ask for the site called Torreon, and for that purpose they hereby confer ample authority upon Don Nerio Antonio Montoya, in their name and representing their persons, rights, and interests, to solicit a grant to the aforementioned site of Torreon from the proper authority, and for the benefit of whom it may concern I have executed this power of attorney, signing the same with my attending witnesses, to which I certify.

(Signed)

VICENTI OTERO,

Attending :

(Signed) JUAN SANCHEZ.

Attending :

(Signed) JOAQUIN ALARID.

I accept the foregoing trust.

(Signed)

NERIO ANTONIO MONTOYA,

For the years one thousand eight hundred and forty and one thousand eight hundred and forty-one.

To the Honorable Prefect Don ANTONIO SANDOVAL :

Citizen Nerio Antonio Montoya, a resident of Valencia, for himself and in the name of the individuals contained in the accompanying power of attorney, appear before your honor with all due respect and state that myself, as well as my clients, being short of tillable land for the support of our families, and the Torreon Spring being unoccupied, and the fertility of the soil it waters being such that it promises to yield a bountiful crop and be a benefit of agriculture, a purpose so much recommended by our wise laws; for these reason I humbly pray your honor to grant us, without injury to third parties, the above-mentioned lands in the name of the nation, with the following boundaries : From these spring above mentioned towards the north with the lands of Tajique, a distance of about 800 varas, to the south one league; on the east as far as the water reaches, and on the west to the farm belonging to me, being a distance of about 500 varas.

In view of all which I pray and request your honor to grant our petition in order that the customary title may be executed without injury to judicial rights, by which we will receive grace.

Albuquerque, February 16, 1841.

(Signed)

NERIO ANTONIO MONTOYA.

BARELAS, February 23, 1841.

This petition is referred to the justice of the peace of Tome to report fully if the petitioners have any lands from which to obtain their subsistence, and also if the land they ask for is vacant and belongs to no one, and what is the nature of the land.

(Signed)

(Signed)

SANDOVAL.

FRANCISCO SARRACINO, *Secretary.*

In compliance with the decree of the prefect, Don Antonio Sandoval, dated on the 23rd of February last past, I have to report that I have ascertained that the persons contained in the accompanying lists have not lands sufficient to subsist upon, and that the lands solicited offers all the advantages the petitioner claims for it; it will not injure any third party, and is unoccupied. (What has been erased is void.)

151 Tome, March 1st, 1841.

(Signed)

JUAN DE JESUS CHAVEZ.

BARELAS, March 3rd, 1841.

From the foregoing report it appears that there is no obstacle in granting the request of the petitioners, therefore these proceedings are referred to Don Juan Chavez, justice of the peace of Tome, in order that he may proceed to give them national and personal possession of the land granted by this prefecture, which possession will be formerly made in the name of the Mexican nation (which may God preserve) with all the suctomary solemnity, and without injury to third parties, leaving pastures, wood, timber, and customary roads free, excepting lands for cultivation, town site, enclosures, and for other necessary and common uses, giving a sufficient amount of land to each one under a penalty of forfeiture if they committe any crime, or if they fail to cultivate the land within the time prescribed by law, for which purpose the aforesaid justice will take such steps as may be necessary, reporting the same to this prefecture in order that it may be filed in its archives.

(Signed)

ANTONIO SANDOVAL.

(Signed)

FRANCISCO SARRACINO, *Secretary.*

In this jurisdiction of Tome, on the 10th day of March, one thousand eight hundred and forty-one, I, citizen Juan de Jesus Chavez, justice of the peace of said jurisdiction, by virtue of the commission entrusted to me by Don Antonio Sandoval, prefect of the second district in the foregoing decree of the third instant, and in compliance with said decree, I proceeded to the site of El Torreon, and being there, then having summoned Don Nerio Antonio and the other settlers whose names appear on the accompanying lists, to whom I made known the foregoing grant, and no question having arisen, I proceeded with two attending witnesses, who I appointed for the purpose, to examine the land, and measuring the same from north to south one league, and from east to west one and one-half leagues, I gave them from north to south, as their northern boundary, the boundary of Tejique; on the south, the Cuerbo Mountain; east, the junction of the Torreon Canon with that of the Cuerbo; west, the boundary of the farm of Don Nerio Montoya. Within these boundaries I gave to each settler one hundred varas of land for cultivation, measured from east

to west. In addition to the one hundred varas I assigned to them for building the town, enclosures and other common purposes, I gave to each settler a piece of land immediately adjoining the town for gardens, considering the same to be just, and having been requested to do so by the settlers, which request I complied with as aforestated. In addition to the hundred varas above mentioned, I gave to Don Nerio Montoya the valley which is north of the Torreon Mountain. I gave to Mauricio Sanchez for his share the little valley of the farm of the late Bartolome Baca, to the common road of the Canon de los Cumanches, toward the south; on the east, to the Tajique road; on the north, the river; and on the west, to the source of the spring; which I gave them to hold for themselves, their children, heirs, and successors; said land to be cultivated within the period prescribed by law. All of which was granted nationally and personally, in the name of the Mexican nation (which may God preserve), to which they belong. The settler being notified of the aforementioned petition of the honorable prefect, I took them by the hand, walked with them over the land, they thre' stones, pulled up grass, and all at one time cried: "Long life, long life to the supreme government of the Mexican nation" (which may God preserve), and in testimony of legal possession, which I gave them, and they received quietly and peaceably without opposition, and in order that it may so appear I placed it in record, signing the same with my attending witnesses, with whom I act in the absence of notaries, there being none in this territory on said day, month, and year, to which I certify as above stated. Citizen Juan de Jesus Chaves interlined is valid.

(Signed)

JUAN DE JESUS CHAVES.

Attending:

(Signed) JUAN LUERA.

(Signed) ANTONIO BARELA.

Addenda: Not having mentioned the boundaries of the tillable lands I measured out or them, I state them in this decree, and they are from north to south from the little table-lands on the opposite side of the river, south the main ditch (*acequia madre*), where twelve varas are left free for a road, and to allow the said settlers to transport their crops.

152 I certify.

Date *ut supra*.

(Signed)

JUAN DE JESUS CHAVES.

Attending:

(Signed) JUAN LUEVA.

(Signed) ANTONIO BARELA.

153

Defendant's Exhibit.—Tajique grant.

[Copy.]

MOST EXCELLENT SIR: Manuel Sanchez for himself and in the name of nineteen individuals, all residents of Valencia, represent to your excellency that having discovered a tract of land suitable for cultivation at the point of Tajique which is vacant and consequently will not be to the injury of any third party—on the contrary, the condition of the petitioners will be bettered on account of the limited amount of land which they can now cultivate—and that your excellency in compliance with the law which recom-

mends the encouragement of agriculture be pleased to direct that the above-mentioned land, containing one-half league in circumference, be donated to them, protesting to pay all costs in good faith, &c.

Valencia, March 9th, 1834.

(Signed)

MANUEL SANCHEZ.

SANTA FE, March 17th, 1834.

The constitutional justice of Valencia, to which jurisdiction Tajique belongs, as I am informed, will make the division asked for within the boundaries they set forth, provided no injury will result to any third party, the grant temporarily made by this government to avoid delay in planting their crops being subject to the confirmation of the most excellent deputation when it shall meet.

(Signed)

SARRACINO.

At this point of Rajique, on the ninth day of April, one thousand eight hundred and thirty-four, in compliance with the provisional order of the political chief to place the parties in possession in order that the individuals who asked for a grant to said land cont'ning one-half league in circumference should not lose their crops, I, Citizen Vicento Otero, constitutional justice of the township of Valencia, proceeded to the place for that purpose, with two attending witnesses which said office is entitled to, commencing by measuring the one-half league in circumference, having in the first place set aside one hundred and seventy-two varas in the most convenient place for a town site, and from the center thereof the one-half league in the direction of the four cardinal points of the compass was measured in the following manner: The first, towards the south, which reached to a thick cedar a little above the cañon called the "De Los Pinos;" the second, toward the north, to the cañon De las Urigas, where a pine tree was marked with a cross; the third, towards the west, to the little table-lands of the Cueva, where another pine tree was marked with a cross; the fourth, towards the east, to the lone pine. Said measur'ments having been made in the presence of twelve of the grantess, the subdivision of the arable land to which each one was entitled to was omitted on account of the absence of seven of those contained in the granting act, the persons present to commence planting their crops with the understanding that when the proper time arrived I would return to subdivide the land, informing them that no one acquired any right to the land he cultivated, excepting those to whom it should fall by lot, with the condition that whosoever received the land which was broken up should break up a like quantity for the first occupant; and for the purpose of placing this on record, & other proper objects, I, the aforesaid justice, signed this document, with my attending witnesses, to which I certify.

(Signed)

VICENTO OTERO.

Attending :

(Signed) JACINTO SANCHEZ.

Attending :

(Signed) JOSE MANUEL MALDONADO.

At this place of Tajique, on the twenty-fourth day of December, one thousand eight hundred and thirty-four, I, Citizen Vicento Otero, constitutional justice of the jurisdiction of Valencia, in fulfillment of the fore-

going document, and in the presence of my attending witnesses, I caused to appear before me the persons to whom this place was granted, who being present, I informed them of the operation to be performed, as set forth in the foregoing document, and they willingly consented to receive whatever tillable land each one was justly entitled to; whereupon, the calculation being made, I commenced measuring from west to east one hundred and twelve varas to each one, having to leaving out in the first place twelve varas as outlets to the town, having placed them in possession in the following order: 1st, measured to Maria Gertrudis Chaves, who is bounded by the lands of Antonio Otero; 2d, Antonio Otero, who is bounded by the lands of Maria Gertrudis Chaves and those of Manuel Garcia; 3d, Manuel Garcia, who is bounded by Antonio Otero and Jose Lorenzo Otero; 4th, Jose Lorenzo Otero, bounded by Manuel Garcia and Matias Sanchez; 5th, Matias Sanchez, bounded by Jose Lorenzo Otero and Jose Antonio Zamora; 6th, Jose Antonio Zamora bounded by Matias Sanchez and Rafael Sanchez; 7th, Rafael Sanchez, bounded by Jose Antonio Zamora and Francisco Moya; 8th, Francisco Moya, bounded by Rafael Sanchez and Jose Maria Maldonado; 9th, Jose Maria Maldonado, bounded by Francisco Moya and Cristobal Zamora; 10th, Cristobal Zamora, bounded by Jose Maria Maldonado and Lazaro Ramirez; 11th, Lazaro Ramirez, bounded by Cristobal Zamora and Mateo Anaya; 12th, Mateo Anaya, bounded by Lazaro Ramirez and Ignacio Cedillo; 13th, Ignacio Cedillo, bounded by Mateo Anaya and Roman Zamora; 14th, Roman Zamora, bounded by Ignacio Cedillo and Domingo Zamora; 15th, Domingo Zamora, bounded by Roman Zamora and Jose Chaves; 16th, Jose Chaves, bounded by Domingo Zamora and Antonio Sanchez; 17th, Antonio Sanchez, bounded by Jose Chaves; Jose Sanchez to the west of the temple; Divinisio Vigil to the west of the temple; giving to all the privilege of breaking up such land as they may want, on a line of their own, without going beyond the half league granted to them, it being understood that those having received land which has been broken up by others within their lot shall break up an equal quantity for the person entitled to it, on unbroken land, by the month of April, 1835; and if said condition is not complied with, they will continue using the land they have broken up originally until other land is broken for them. All having expressed their satisfaction at this and all other matters connected with the division of the land, and in order that they, their heirs, and successors may enjoy the same peaceably and quietly, and in order that they may barter their land or dispose of it to whomsoever they may see proper at the expiration of the period prescribed by law for such grants, I, the aforesaid justice, said that I would authorize this document, as I did authorize it, in due form of law, and by virtue of the powers in me vested, signed with those in my attendance, to which I certify.

Attending:

(Signed) VICENTE OTERO.

Attending:

(Signed) JOSE ANTONIO MALDONADO.

The above is a true and faithful copy of the original, to which reference is made, asked for by the parties interested.

Tajique, December 25th, 1834.

(Signed)

VICENTE OTERO.

Defendant's Exhibit.—Chilili grant.

[Grant translation.]

ALAMEDA, March 8, 1841.

Citizens Santiago Padilla, Juan Manuel Padilla, Julian Padilla, Francisco Pacheco, Agustin Padilla, Rafael Gallegos, and Luis Salasar, for themselves and in the name of twenty individuals, residents of the third judicial district of this department, all of whom are heads of families, appear before your excellency in the manner best provided in law and convenient to us, and state that finding ourselves in the most abject necessity for the want of lands to cultivate in order to obtain our necessary subsistence, and that our sons may have some occupation, and having registered a vacant and unoccupied tract of land at the town of Chilili, abandoned and without any owner, we therefore pray and request your excellency to be pleased to direct, in the name of the supreme government of the Mexican nation and of the law, that a grant be made to us, and that we be placed in possession of the land we petition for, for ourselves, our children, heirs, and successors, which possession we solicit from the upper springs called the springs of Los Casos, which are towards the west, to the brow of the Cibolo on the east, and from west to south the summit of the sharp-edged hills of the cañon of Chilili; trusting to the generosity of your excellency that the grant be made to us, by which we will receive grace, favor, and justice.

SANTIAGO PADILLA,
JOSE MA. PADIA,
JULIAN PADIA,
FRANCO. PACHECO,
AGUSTIN PADIA,
RAFAEL GALLEGOES,
LUIS SALASAR,

For themselves and in the name of twenty individuals.

Most Excellent MANUEL ARMIJO,
Civil and Military Governor.

SANTA FE, March 20, 1841.

To Don ANTONIO SANDOVAL,

Justice of the First Appointment of the Third Judicial District:

That taking into consideration the well-known poverty of the petitioners, and that this government is well informed of the fact, said justice will place the petitioners in secure possession of the land they ask for, giving them such boundaries or limits as are set forth by them, informing them that as colonists they are to remain there without disposing of the land for four years, as required by law.

MANUEL ARMIJO,
GUADALUPE MIRANDA,
Secretary.

In view of the superior decree of Don Manuel Armijo, the most excellent governor and general commanding the department, and in due compliance therewith, Don Antonio No. Ruiz is hereby commissioned to

proceed and place the petitioners for the pueblo of Chilili in secure possession thereof, to whom, in full compliance with the directions of his excellency and the petition of the parties interested, he will establish the boundaries and erect mounds of stone, giving to each one lands according to his means for cultivation, informing them that the running springs and heads of streams are to be well taken care of, as belonging to them, that they be not trodden by sheep and goats, giving to each one a certificate as evidence of his right, title, and interest thereto in all time to come; and after having executed all acts necessary for a true and legal possession, he will put them under cover and will bring them to these archives, where they will remain as evidence in all time to come.

156

ANTONIO SANDOVAL,
Justice of First Appointment.

157 Be it further remembered that on the same day, to wit, the 30th day of November, A. D. 1894, a stipulation was filed in the said cause, in the office of said clerk, which said stipulation is in the words and figures following, to wit:

ELOISA L. BERGERE ET AL. }
vs. } No. 58.
THE UNITED STATES. }

It is hereby admitted on behalf of the United States and stipulated that the deeds hereinafter mentioned are in due form and conveyed whatever interest the grantors therein had in said grant to the grantees, and that the clerk need not copy the same in the record, but in lieu thereof may include this stipulation:

	Date.	Recorded.
1. Placido Robles to Miguel A. Otero.....	July 14, 1879	Book A, 4, p. 243, in Valencia Co.
2. Jose Maria Sanchez y Baca to Manuel Antonio Otero.	July 15th, 1878.....	Book A, 4, p. 207, in Valencia Co.
3. Emilia Otero de Henriques and Charles H. Armijo to A. M. Bergere and wife and children.	March 14, 1893.....	Book B, 2, p. 216, in Valencia Co.
4. Juan Chaves y Baca and Julian Castillo de Chaves to M. A. Otero.	July 22, 1878.....	Book A, 4, p. 205, in Valencia Co.
5. Placida Chaves y Baca to M. A. Otero....	June 29, 1878.....	Book A, 4, p. 211, in Valencia Co.
6. Jose Luna y Lugarda Baca de Luna to M. A. Otero.	June 10, 1878.....	Book A, 4, p. 213, in Valencia Co.
7. Bartolo Chaves y Baca y Maria Anta, de Baca to M. A. Otero.	May 24, 1878.....	Book A, 4, p. 206, in Valencia Co.
158 8. Santiago Sanchez y Baca and Maria Perez de Sanchez to M. A. Otero.	June 27, 1878	Book A, 4, p. 210, in Valencia Co.
9. Mauricio Sanchez y Baca to M. A. Otero.	June 27, 1878.....	Book A, 4, p. 209, in Valencia Co.
10. Candelaria Baca to Miguel A. Otero.....	August 4, 1879.....	
11. Julian Sanchez y Teresa Sanchez y Sanchez to M. A. Otero.	July 16, 1878.....	
12. Jesus Ma. Sena y Baca y Agapita Ortiz to M. A. Otero.	July 17, 1878.....	Book A, 4, p. 215, in Valencia Co.
13. Mucio Chaves and Carmel Vigil de Chaves to M. A. Otero.	Feb. 14, 1869.....	

T. B. CATRON,
Attorney for Plaintiffs.
MATT. G. REYNOLDS,
United States Attorney.

159 And be it further remembered that on the same day, to wit, the 30th day of November, A. D. 1894, a stipulation was filed in the said cause, in the office of said clerk, which said stipulation is in the words and figures following, to wit:

160 In the Court of Private Land Claims.

ELOISE L. DE BERGERE ET AL. }
vs. } No. 58.
THE UNITED STATES.

It is hereby stipulated and agreed that the old Spanish and Mexican archives in which the documents, records, and grant papers pertaining to land grants in New Mexico were kept, in Santa Fe, New Mexico, prior to its annexation to the United States, were partially destroyed and carried away by the revolutionists in the revolution which took place in New Mexico in 1837, and many of the said documents, records, and papers were lost, destroyed, or not returned; and that afterwards, in the year 1870 or 1871, under Governor Pyles' administration, all the papers, documents, and records remaining in the old Spanish and Mexican archives which had not been turned over to the surveyor-general's office, and in which there were many documents, records, and papers pertaining to land grants and land titles in New Mexico, were sold for waste paper to the people generally and carried away, and many of them never recovered thereafter. The foregoing facts having been several times proven before the court in other cases, this agreement is made so as to avoid encumbering the record with voluminous evidence which can not be contradicted, and said facts so agreed to may be used on the trial as if proven by competent evidence.

MATT. G. REYNOLDS,

United States Attorney for the Court of Private Land Claims.

T. B. CATRON,

Attorney for Petitioners.

, 1894.

161 And be it further remembered that afterwards, to wit, on the 30th day of November, A. D. 1894, a stipulation was filed in said cause, in the office of said clerk, which said stipulation is in the words and figures following, to wit:

162 In the Court of Private Land Claims.

ELOISE L. DE BERGERE ET AL. }
vs. } No. 58.
THE UNITED STATES.

It is agreed that in making up the record in this cause the clerk may include only translations of the original Spanish and omit the Spanish of the documents, and such translations shall be used the same as the originals, with the right of either party to call for and present the original document or paper in the Spanish language, before the Supreme Court, on the hearing of the cause.

It is also stipulated that Melgares, who made the grant of the land in question, also on April 20, 1819, as governor of New Mexico, made a grant of land to Antonio Ortiz, which has been confirmed by Congress as

private land claim number 42, the grant papers thereof being included in Executive Document No. 18, House of Representatives, 2nd session, 26th Congress; also the same governor, during his term of office in 1819 and 1820, made two grants of land to Pedro Armendariz, which have been confirmed by the Congress of the United States as private land claims numbers 33 and 34, respectively, the granting papers thereof being contained in Executive Document No. 14, House of Representatives, 1st session, 26th Congress, from pages 193 to 231, inclusive; also, the same governor, on the 2nd of May, 1822, made the Anton Chico grant to Salvador Tapia, which has been confirmed as private land claim number 29; the copy of the papers thereof will be found in Executive Document No. 14, of the House of Representatives, 1st session, 26th Congress, commencing on page 138 thereof; also, the same governor, on the 20th day of August, 1820, made the grant of Our Lady of Light, in the city of Santa Fe, to the vicar-general of the Catholic Church, which said grant was confirmed by the Congress of the United States as private land claim No. 25, to John B. Lamy, and is found in House of Representatives Report No. 457, 1st session, 25th Congress. There have also been confirmed by the United States Court of Private Land Claims, sitting at Santa Fe, the grant called Cervilleta de la Joya, made to Carlos Gabaldon and 163 others, in the year 1819, and is found in Executive Document No. 62, House of Representatives, 2nd session, 43rd Congress, and was reported as private land claim number 95; also a grant known as the Cañon de Carnue, which was made by the same governor in the year 1819, and has been confirmed by the United States Court of Private Land Claims; also, there are four other grants, claims for the confirmation of which are now pending before the United States Court of Private Land Claims, which were made by the said governor during his term of office, one called "La Gotera," another known as the "Lucero Spring," made in the year 1819; another called the "Ojito de las Medinas," made in 1819; and the other called the "Paraje del Rancho," made in 1821.

MATT. G. REYNOLDS,

U. S. Attorney for the Court of Private Land Claims.

T. B. CATRON,

Attorney for Petitioners.

, 1894.

164 And be it further remembered that afterwards, to wit, on the 29th day of September, A. D. 1894, the same being the thirty-ninth day of the August term, A. D. 1894, the following further proceedings were had in the said cause, to wit:

Decree.

165 UNITED STATES OF AMERICA,
Territory of New Mexico, ss:

In the Court of Private Land Claims. Between Eloisa L. Bergeré, petitioner, and The United States et al., respondents.

Final decree.

This cause having heretofore been heard upon the pleadings and exhibits filed, and upon proofs taken, full legal proof having been taken,

and counsel having been heard for the said parties, and the petition in this cause having been sustained by satisfactory proofs, after due deliberation, the court being now sufficiently advised in the premises, makes the following findings of fact:

First. That on February 4, 1819, Bartolomé Baca presented a petition to the then governor of the Province of New Mexico, Facundo Melgares, setting forth that he had registered a piece of vacant *piece of land* which was called the Torreon; that the said governor made the said grant as petitioned for on July 2, 1819, and directed José García de la Mora to give possession, designating the limits and officiating duly; that afterwards, to wit, on September 12, 1819, the said official gave to the said Bartolomé Baca the actual possession of the said tract of land, called the Torreon, petitioned for.

Second. That the said tract of land, called the Torreon, had been in the actual possession of Bartolomé Baca for more than four years from the date of the grant on said September 12, 1819.

Third. That the said petitioner, who filed her petition for herself and other heirs of Manuel Antonio Otero and Miguel Antonio Otero, are the legal successors in interest to the rights of the said heirs of the said Bartolomé Baca.

The court finds as a matter of law that the grant to said Bartolomé Baca was imperfect at the time of the cession of the department of New Mexico to the United States of America by the treaty of Guadalupe Hidalgo, and that the petitioner for herself and other heirs of Manuel Antonio Otero and Miguel Antonio Otero, as the legal representatives of

the said Bartolomé Baca, is entitled to a confirmation of eleven 166 square leagues of land within the outboundaries of the tract of land called the Torreon granted to said Baca, and of which he was put in actual possession.

It is therefore ordered, adjudged, and decreed by this court that the claim of the petitioner for the land hereinbefore described and set out be, and the same is hereby, confirmed to the extent of eleven square leagues to the heirs and legal representatives of Bartolomé Baca, provided that this confirmation shall not confer any right or title to any gold, silver, or quicksilver, mines or minerals of the same.

THOMAS C. FULLER,
Associate Justice.

O. K. REYNOLDS,
U. S. Atty.

167 And be it further remembered that afterwards, to wit, on the 29th day of September, A. D. 1894, the same being the 39th day of the August term, 1894, the following further proceedings were had in the said cause, to wit:

ELOISA L. BERGERE ET AL., PETITIONERS, } Bartolome Baca grant.
vs. } No. 58.
THE UNITED STATES, RESPONDENT. }

And now, to wit, on September 29th, 1894, upon the petition for an appeal in the above-entitled cause being filed and presented in open court,

the defendant, The United States of America, by Matt G. Reynolds, esq., its attorney, being present and appearing thereto, it is ordered that the appeal be, and the same is hereby, allowed as prayed for.

THOMAS C. FULLER,
Associate Justice, Court of Private Land Claims.

168 And be it further remembered that afterwards, to wit, on the 28th day of March, A. D. 1895, an appeal and allowance were filed in the said cause in the office of said clerk, which said appeal and allowance are in the words and figures following, to wit :

169 UNITED STATES OF AMERICA,
Territory of New Mexico, ss :

In the Court of Private Land Claims, Santa Fe district, 1895. Between Eloisa L. Bergere for herself and the other heirs of Manuel Antonio Otero and Miguel Antonio Otero, and the United States of America, Joel P. Whitney, and Franklin H. Story. No. 58.

The above-named petitioner, Eloisa L. Bergere, for herself and the other heirs of Manuel Antonio Otero and Miguel Antonio Otero, feeling and considering herself aggrieved by the decree entered on the twenty-ninth day of September, A. D. 1894, in the above-entitled proceeding, whereby the grant of the Torreon made to Bartolome Baca is decreed to have been an imperfect grant at the time of the union of the department of New Mexico to the United States by the treaty of Guadalupe Hidalgo, and that the petitioner was only entitled to a confirmation of eleven square leagues of land lying within the boundaries of said tract, doth hereby appeal from said decree to the Supreme Court of the United States, and prays that this appeal be allowed and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

T. B. CATRON,
JAMES W. VROOM,
Solicitors for the Petitioner, the Appellant.

And now, to wit, March 23, 1895, upon the petition for an appeal in the above-entitled cause being filed and presented in open court, the defendant, The United States of America, by Matt G. Reynolds, esq., its attorney, being present and appearing thereto, it is ordered that the appeal be, and the same is hereby, allowed as prayed for.

JOSEPH R. REED,
Chief Justice.

170 And be it further remembered that afterwards, to wit, on the eighteenth day of May, A. D. 1895, there was filed in the said cause in the office of said clerk a citation, which said citation is in the words and figures following, to wit :

Citation on appeal to Supreme Court.

UNITED STATES OF AMERICA, ss:

The President of the United States to the United States of America, and
Joel P. Whitney and Franklin H. Story, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington; to wit, on the eleventh day of May, 1895, pursuant to an appeal filed in the office of the clerk of the Court of Private Land Claims, wherein the United States is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this fourth day of May, in the year of our Lord one thousand eight hundred and ninety-five.

JOSEPH A. REED,
Chief Justice, Court of Private Land Claims.

On this day of , 189 , personally appeared before me the subscriber, , and makes oath that he delivered a true copy of the above citation to .

Subscribed and sworn to before this day of , 189 .

I hereby acknowledge service of the foregoing citation for and on behalf of the United States, appellee, this 18th day of May, 1895.

MATT. G. REYNOLDS,
Attorney for Appellee, U. S.

I hereby acknowledge service of the foregoing citation for on behalf of the respondents, Joel P. Whitney and Franklin H. Story, this 18th day of May, 1895.

JNO. H. KNAEBEL,
Attorney for Whitney & Story, Appellees.

172 UNITED STATES OF AMERICA,

Territory of New Mexico, ss:

I, James H. Reeder, clerk of the Court of Private Land Claims, do hereby certify that the foregoing 171 pages contain a true, full, and complete transcript of the records and files in my office, in the case filed therein, in which Eloisa L. Bergere et al. are plaintiffs, and the United States et al. are defendants, for the confirmation of a certain claim known and designated as the Bartolome Baca grant.

Witness my hand and the seal of said court this 18th day of May, A. D. 1895.

[SEAL.]

2579—8

JAMES H. REEDER, *Clerk.*

173 ELOISA L. BERGERE FOR HERSELF AND
other heirs of Manuel Antonio Otero
and Miguel Antonio Otero, plaintiffs and
appellee's,
vs.

THE UNITED STATES, JOEL PARKER WHITNEY,
and Franklin H. Story, defendants.

No. 58. Bartolome
Baca grant.

Now comes Matt. G. Reynolds, esq., United States attorney, and by authority of the Attorney-General of the United States, moves the court to allow the said defendant, the United States, an appeal from the decree entered on the 29th day of September, 1894, in the above-entitled suit to the Supreme Court of the United States; and shows to the court here that the statement by the United States attorney to the Attorney-General required by sec. 9 of the act of Congress establishing this court, approved March 3, 1891, was not made in said cause within sixty days after the rendition of judgment therein, but was made on February 8, 1895, and it appearing to the satisfaction of the court that the statement required to be made by the U. S. attorney to the Attorney-General, by sec. 9 of the act of Congress establishing this court, was not made within sixty days after the rendition of the judgement therein, but was made on, to wit, the 8th day of February, 1895; and it further appears that the time in which the other defendants herein might have appealed under said act from said decree has expired.

It is ordered that an appeal be, and hereby is, now allowed as prayed for.

UNITED STATES OF AMERICA,
Territory of New Mexico:

U. S. Court of Private Land Claims.

ELOISA L. BERGERE FOR HERSELF AND OTHER
heirs of Manuel Antonio Otero and
174 Miguel Antonio Otero, plaintiffs and
appellee's,
vs.

THE UNITED STATES, JOEL PARKER WHITNEY,
and Franklin H. Story.

I, James H. Reeder, clerk of the U. S. Court of Private Land Claims, do hereby certify that the above and foregoing is a true, full, and correct transcript of the proceedings had in the above-entitled cause on the 28th day of May, A. D. 1895, as the same appears of record in journal 2, Santa Fe.

Witness my hand and the seal of said court this 21st day of June, A. D. 1895.

[SEAL.]

JAMES H. REEDER, Clerk.
By IRENEO L. CHAVES.

Citation on appeal to Supreme Court.

UNITED STATES OF AMERICA, ss:

The President of the United States to Eloisa L. Bergere for herself & other heirs of Manuel Antonio Otero and Miguel Antonio Otero, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, to wit, on the 26th day of July, 1895, pursuant to an appeal filed in the office of the clerk of the Court of Private Land Claims, wherein the United States is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant as in the said appeal mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 28th day of May, in the year of our Lord one thousand eight hundred and ninety-five.

WILBUR F. STONE,

Associate Justice Court of Private Land Claims.

On this day of , 189 , personally appeared before me the subscriber, , and makes oath that he delivered a true copy of the above citation to .

Subscribed and sworn to before me this day of , 189 .

I hereby acknowledge service of the foregoing citation for and on behalf of the plaintiff and appellee this 8th day of July, 1895.

JAMES W. VROOM,

Attorney for Appellee.

176 (Indorsed :) Case No. 58, file No. . Eloise L. Bergere et al., plaintiffs, vs. The United States, defendant. Bartolome Baca. Matt. G. Reynolds, U. S. attorney.

177 In the Court of Private Land Claims. Appeal to the Supreme Court of the United States.

ELOISE L. DE BERGERE ET AL. }
vs.
THE UNITED STATES ET AL. }

I, J. H. Reeder, clerk of the United States Court of Private Land Claims, do hereby certify that the foregoing one hundred and seventy-two pages contain a true, full, and complete transcript of all of the pleadings, records, proceedings, and files in my office, as also all the evidence and proofs had, received, and heard in the cause filed and tried in the Court of Private Land Claims of the United States, including certain stipulations to take the place of certain deeds of conveyance and other grants of land used in evidence on said trial, said stipulations being included therein, in which cause Eloise L. Bergere et al. are the plaintiffs and the United States et al. are the defendants, said cause being for the confirmation of a certain private land claim or grant commonly known and designated as the Bartolome Baca grant.

In witness whereof I have hereunto set my hand and affixed the seal of said Court of Private Land Claims of the United States, at Santa Fe, New Mexico, this the first day of July, A. D. 1895.

[SEAL.]

JAMES H. REEDER,

*Clerk.*By IRENEO L. CHAVES,
Deputy Clerk.

178 In the Supreme Court of the United States, October term, A. D. 1895.

ELOISE L. DE BERGERE ET AL. }
vs.
THE UNITED STATES. }

There being some doubts expressed as to whether the certificate of the clerk of the Court of Private Land Claims attached to the record in the above-entitled cause is sufficient to show that the said record contains a complete and perfect transcript and copy of the records of the pleadings, proceedings, and all of the evidence which was used in said cause, and said record having been filed and said cause docketed before a correction of said certificate could be made:

Now, therefore, in order to avoid the necessity of a return of said record to the clerk of said Court of Private Land Claims in order that a more perfect certificate may be made, it is hereby stipulated and agreed by and between the petitioners in said cause by their attorney and by the said United States, defendant, by its Solicitor-General, that the clerk of the Supreme Court of the United States be, and he hereby is, authorized to correct the record in said cause by annexing to the same the accompanying certificate of the clerk of the Court of Private Land Claims and by detaching from or cancelling on the same the certificate which was transmitted with said record; and that the certificate hereto annexed shall be used and taken as the certificate of said record instead of the said other certificates so hereby directed to be detached or cancelled.

T. B. CATRON,
Attorney for the Petitioners.
HOLMES CONRAD,
Solicitor-General.

179 (Indorsed:) Case Nos. 15913 & 15948. Supreme Court U. S. October term, 1895. Term Nos., 625 & 658. Eloisa L. Bergere, &c., appt., vs. The United States et al., 625; and The United States, appt., vs. Eloisa L. Bergere, &c. Certificate of clerk as to transcript of record & stipulations. Office Supreme Court U. S. Filed Aug. 3, 1895, James H. McKenney, clerk.

(Indorsement on cover:) Case No. 15913. Term No., 625. Court of Private Land Claims. Eloisa L. Bergere for herself and the other heirs of Manuel Antonio Otero & Miguel Antonio Otero, appellant, vs. The United States et al. Filed May 23rd, 1895; and Case No. 15948. Term No., 658. The United States, appellant, vs. Eloisa L. Bergere for herself & the other heirs of Manuel Antonio Otero & Miguel Antonio Otero. Filed July 16, 1895.



IN THE
Supreme Court of the United States.

OCTOBER TERM, 1895.

No. 625.

ELOISA L. BERGERE, for herself and the other heirs of
MANUEL ANTONIO OTERO and MIGUEL
ANTONIO OTERO, Appellant,

vs.

THE UNITED STATES.

No. 658.

THE UNITED STATES,

vs.

ELOISA L. BERGERE, for herself and the other heirs of
MANUEL ANTONIO OTERO and MIGUEL
ANTONIO OTERO.

**Statement and Brief of Argument in Behalf
of Eloisa L. Bergere and other Claimants.**

These cases are appeals from the decree of the Court of Private Land Claims made at Santa Fe, New Mexico, Sept. 29th, 1894, in a proceeding wherein the claimants were petitioners for the confirmation of a certain grant of land situate in Bernalillo County in said Territory, which proceeding was in pursuance of Act of Congress, approved March 3, 1891, and entitled An Act to establish a Court of Private Land Claims for the settlement of private land claims in certain States and Territories.

The first appeal is from the decree of the Court that, as matter of law the grant to Bartolome Baca was imperfect at the time of the cession of the department of New Mexico to the United States, and that claimant was entitled to only a confirmation of eleven square leagues within the boundaries of the tract called Torreon.

The cross-appeal is by the United States from the said decree as being contrary to law in confirming the claim for any portion of the grant.

Bartolome Baca, through whom claimants derive title, on Feb. 4, 1819, petitioned the acting Governor of New Mexico for a grant of vacant land, which they call the Torreon, in order to establish thereon a permanent hacienda.

On July 2, 1819, the Governor acceded to the prayer of the petitioner and directed Jose Garcia de la Mora to give possession, "designating the limits and what is proper and to transmit the expediente to this superior office, so that if approved, the proper testimonio may be given."

In pursuance of this commission the officer placed the said Baca in possession of the tract by going with him and his companions on the tract and with all the forms of a legal investiture, installing him in possession. In further fulfillment of the Governor's commands the officer designated "to him his boundaries" which are well known natural land marks that are as plain to be seen to day as when in 1819 Baca and his companions in grateful acknowledgment of a kings bounty shouted "long live Don Fernando VII."

The report of the Commissioner concludes, "Wherefore, I transmit this to the superior authority in order that it being examined by you, you may decide as you deem best."

At the left hand corner of this document appear the words "los limitos por" and beneath it "elgares" the M having suffered abrasion—but enough of the letter remaining to show by comparison with the former signature that it is undoubtedly the genuine signature of the Governor.

The translation of this document in the transcript has the word "torn" before "los limitos" as well as after those words, but it might with greater propriety have said *worn* inasmuch as the defect occurs on the line of the outside fold of the paper, which was most exposed to injury from wear, and the defect itself unmistakably proves that it was occasioned by abrasion and not from tearing either intentional or accidental.

Both signatures of the Governor are genuine.

The Surveyor General at the time he made his decision when the grant was first presented for his action, said "the signature of Melgares agrees with his signature upon other documents among the old Spanish archives, and they are believed to be genuine." Mr. Tipton, long employed by the Government in the office of the Surveyor General, and conceded at the trial to be a competent expert witness testified to the genuineness of both signatures, and indeed, no question has ever been made as to their authenticity.

Not only, therefore is the grant unquestioned so far as the paper evidence of it is concerned, but it is a part of the uncontradicted evidence in the case that the grantee took possession in September, 1819, when juridical possession was given and remained in such possession until the date of his death in 1835; and so open and notorious was his possession, that the tract called "Torreon" was known generally as the Bartolome Baca Grant, the old name of Torreon having

lapsed or been confined to the actual "block house" erected by Baca, and the owners name applied to the tract granted.

Furthermore, Baca's possession was actively maintained during his life, and his claim of ownership was evidenced by his erecting the block house; his constructing acequias for irrigation, the maintenance of large herds of cattle and horses and sheep in different bands, aggregating at least 50,000 head, together with swine, and the establishment of permanent ranches with buildings for the accommodation of his herders and ranchmen. His sons remained at the ranches attending to his large interests. He had manifestly carried out to the letter, all that he had engaged to do—as well as what he expected to be able to do—as stated in his petition. It is also in evidence that he invited families to go and live at the Torreon, on account of the protection their presence there would afford against the Indians, Record, p. 71. And this was the beginning of the town that is now there.

To account for the largeness of the grant, the above brief recital would show that Baca was a man eminently qualified to benefit his Sovereign by aiding in the settlement of the country, and his merits and influence are set out officially in the return of De La Mora to the commission given him to place Baca in possession. For he says,

"Bartolome Baca, captain of volunteer militia, had
"merited, by his conduct in the service of both Majes-
"ties as proved by the offices that had been conferred
"upon him, being Alcalde Major and in other services
"in the field; the Governors always appointing him
"Commander in the campaigns and scouting parties;

"and in addition to all this, he had always surpassed others in voluntary contributions, &c."

He was also the first Governor under Mexican rule. Upon his death, and the death of his wife, which occurred in the same year, his papers came to the possession of a son-in-law, who lived with him and who acted as administrator, and upon his death *his* son Bartolome Baca y Chavez, a witness produced, appears to have inherited as an heirloom the strong box of his grand-father containing papers that had belonged to him.

Among these papers was discovered in about 1878 the document that is the foundation of this claim.

In Sept., 1878, the grant was filed with the Surveyor General in pursuance of Act of Congress, July 22, 1854, and after protracted hearings, the then Surveyor General filed his opinion declining to recommend the grant for confirmation.

It does not appear that any paper relating to the grant was found among the Spanish archives that were transferred to the office of the Surveyor General. So that the document produced by the claimants, obtained as hereinbefore stated from the direct descendants of the original grantee is the only evidence *in writing* of the grant having been made.

But the absence from the records or archives of the Spanish and Mexican land office, of a paper that should be found there, can justly suggest only inquiry but not excite suspicion. For it was so often proven in the Court below that those archives had been rifled and mutilated that to avoid constant repetition the agreement found on page 101 of transcript was entered into.

But the document produced directs the Commissioner to return an account of his action to the Governor, that if approved a testimonio may be given to the grantee. Under the practice as proven, the testimonio sometimes, if not invariably, consisted of the original papers, a copy or at best a duplicate original being retained in the office—so that in exact accordance with this practice there is here produced the testimonio that was directed to be given to the grantee if the grant was approved—and fortunately it is an original paper, not a copy.

We have therefore produced the very paper which the law and practice then in force prescribed that the grantee should have. It is shown that possession was given at the time of the date of the document, and that it continued during the life of the grantee at—least sixteen years and that the grantee's descendants with more or less constancy occupied parts of the grant, but always claiming that they were the owners through a grant made to their ancestor, (though from the absence of the paper title they were unable until the discovery of the documents to demonstrate their ownership,) and since the disposal of their interests, their grantees have maintained the possession—the whole constituting a continuous title by positive grant and by continuous and uninterrupted occupation under that title for a period of seventy years, and in addition thereto it is proven beyond contradiction that whatever conditions were attached to the grant, if any, were fully satisfied during the life of the grantee—at least fourteen years before the territory of New Mexico was ceded to the United States. So that it is contended that this was a complete and perfect grant at the time when the United States obtained the sovereignty of the territory.

ARGUMENT.

First Point.

The Governor of New Mexico had power to make grants of land in 1819.

To cite with particularity and exactness all the provisions of Spanish law relating to the disposition of land belonging to the Crown of Spain in New Mexico would be about as "tedious and unprofitable" as were similar attempts in relation to land grants in Florida and Louisiana. Nor has the lapse of more than a half century increased facility of making investigations in a field that appears to have been most diligently worked by learned counsel in the Florida, Louisiana and California cases: For no discovery has been made since the date of those cases that adds a particle of new information or alters in any particular the Spanish law in relation to land grants as laid down by this Court in the early decisions.

The Royal Regulations of 1754 (*2 White*, p. 62) remain as the initial point in the inquiry; for that law in terms abrogates all former rules on the subject, as being vexatious to his Majesty's subjects and unprofitable to the King's fiscal interests. It was intended and was a general scheme for Crown lands in the New World and by its twelfth section was manifestly, made applicable to all the Crown lands in the newly discovered country. Subsequently in certain provinces, as emergencies arose by increase of population or other causes, new provisions were made. Intendancies were created and the Governor's powers were restricted. Such was the regulation of 1768 (*1 White*, 336). But whether New Mexico was attached to one of the Intendant-

ties or not, it is historically ascertained that its Governor was not subject to the Vice-roy, but appointed and commissioned by the King (*Bancroft's New Mexico*, 256). Again in 1798 (2 *White*, 478) the power was revested in the Intendants. It may be asserted without serious opposition that from 1754 until 1786 the power to make grants remained with Governors and by the latter Cedula that power was transferred to the Intendants. But New Mexico was not named as within the jurisdiction of either of the twelve Intendancies, and so it still remained under the general law of 1754—especially as the law of 1754 is referred to as still in existence—and evidently was to be the rule of action in all cases not specially provided for. Such was the interpretation given to this very law of 1798, in *U. S. vs. Clarke*, 8 Peters 451, where it was held to not apply to East Florida, because it was not specially named, and consequently the power to make grants remained with Governor of East Florida.

Again, in 1812, a new arrangement was made, but this was abrogated in 1814 (2nd *White* 155) *U. S. vs. Delespine*, 15 Peters 324.

The regulations of 1815 and 1816 (2 *White* 174)—(2 *White* 179)—appeared to have relation to the general offices in Spain, and did not affect the power of local authorities in the New World. Again, in 1813 and 1814 new regulations were introduced, but the law of 1754 was referred to as still existing (2 *White* 264).

Mr. Hall states (*Mexican Law*, p. 76) that by Cedula of 1818, all business pertaining to the public lands of New Spain should belong to the office of the treasury at Madrid. He pertinently adds, that the law of 1754 did not appear to be repealed. As this law of 1818 is not stated in full by

Mr. Hall it was considered of such overwhelming importance, that for the trial of this case, the learned counsel for the Government procured through the American Minister at Madrid an exact copy.

It disclosed only a change in the accounting department in Spain, but did not affect in any manner the law for the local disposition of lands. So, it may be left without further elaboration that the law of 1754 was the source of authority for the Governor of New Mexico to make a land grant in 1819.

If the question of the Governor's powers in relation to granting land was a new one, its discussion might still excite historic interest; but the point has been so often raised in the Florida and California cases, it is submitted that reference to some of the Supreme Court decisions ought to be sufficient to put at rest every dispute about the power of the Governor in New Mexico in 1819 to make grants for public lands.

In *Clark vs. U. S.*, 8 Peters 451, the Court says:

“The inconvenience arising from this regulation
“(1735) was so seriously felt that the ordinance was
“repealed in 1754, and the whole power of confirming
“as well as originating titles was transferred to officials
“in the colony.” “In the distant provinces of the au-
“dencias or where sea intervenes (citing the exact
“language of the 12th section of the Royal Regulations
“of 1754) confirmation shall be issued by their Governor
“with advice of the King’s fiscal ministers and of the
“Lieutenant General where he may be stationed.”

In *Delassus vs. U. S.* 9 Peters 134, the Court says:

"A grant or concession made by that officer who "is by law authorized to make it, carries with it *prima facie* evidence that it is within his powers. No excess of them or departure from them is to be presumed. "He violates his duty by such excess and is responsible "for it. He who alleges that an officer entrusted with "an important duty has violated his instructions must "show it." This subject was fully discussed in *U. S. vs. Arrendondo* 6 Peters 691, *Perchman vs. U. S.* 7 "Peters 51, and *U. S. vs. Clarke* 8 Peters 436. It is "unnecessary to repeat the arguments contained in "opinions given by the Court in those cases."

But notwithstanding this definitive statement, the question was again mooted in *Strothers vs. Lucas* 12 Peters 438, wherein the Court says: "No principle can be better established by this Court than that the acts of an officer to whom "a public duty is assigned by his King, within the sphere of "that duty are *prima facie*, taken to be within his power." After enumerating instances and enlarging on this principle the Court further says: "Where the act done is contrary to the "written order of the King, produced at trial, without any "explanation, it shall be presumed that the power has not "been exceeded; that the act was done on the motive set out "therein and according to some order known to the King "and his officers though not to his subjects." Citing *Minor vs. Tillotson* 7 Peters 96 and 8 Peters 447-456.

Again in the *U. S. vs. Peralla*, 19 Howard 680, the Court says:

"We have frequently decided that the public acts "of officers purporting to be exercised in an official ca-

"pacity and by public authority, shall not be presumed "to be usurped, but that a legitimate authority had "been previously given or subsequently ratified."

And then the Court deduces as a ~~corollary~~ the following:

"The presumption arising from the grant itself "makes it *prima facie* evidence of the powers of the "officers making it and throws the burden of proof on "the party denying it."

All these authorities relate exclusively to grants made by officers acting under the *Spanish Crown*. It was only since 1824 that an entire departure was made and that it has been held that the power of officers under *Mexican rule* for making grants of the public land must be looked for, in the written law, and that the exercise of any power not therein specially authorized is invalid. The difference in decision resulted from the difference between the absolute power of the King of Spain and the constitutional restriction of powers under the Mexican Republic. *U. S. vs. Cambustion*, 20 Howard, 59-65.

It is shown that the regulations of 1754 especially authorized the Governors of Provinces therein described as "remote and beyond seas," (which clearly applies to New Mexico), to make confirmations and hence grants. Besides this the uninterrupted custom as evidenced by the archives in the Surveyor General's Office of grants made by Governors in New Mexico, confirms the opinion that the power exercised in this case is lawful one. It is also stipulated in this case (see Record, page 101) that Gov. Melgares made a grant on April 20th, 1819, to Antonio Ortiz which was confirmed by Congress, also two grants to Pedro Armenda-

riz, both of which have been confirmed by Congress; also the Anton Chico grant to Salvador Tapia confirmed by Congress; also the grant "Our Lady of Light," confirmed by Congress. There have been confirmed by the Private Land Claim Court at Santa Fe a grant by the same Governor to Carlos Gabaldon, also the grant called Canon de Carnue, confirmed by the said court as well as four other grants now pending in said court.

The law of 1754—the decisions of the Supreme Court of the United States—the open and notorious exercise of the power of making grants by Governors and the recognition of that power by congressional confirmation, as well as by the Court specially vested with jurisdiction, ought to leave no doubt as to the power of Melgares as Governor of New Mexico to make this grant to Bartolome Baen.

Second Point.

Was there a grant made to Bartolome Baen?

That there was such a grant is proved by the production of the testimonio—or grant itself.

The petition, the Governor's provisional grant, the return of the proper officer commissioned to give juridical possession, and the signature of the Governor (as we contend) in approval, all original papers, evidence beyond a doubt that the grant was made.

If it should be contended that the torn part of the document and some missing words leave the approval unestablished, we reply that enough of the signature remains to show beyond a doubt that the grant was finally approved. Because the grant was not like an act of congress, that became a law unless the veto was affixed to it before the ex-

piration of the limitation. There was no grant at all until the final signature was affixed, the initial concession being only provisional and preliminary, including a direction to the executive officer to report the existence or non-existence of certain essential conditions and to fix boundaries. If this report did not satisfy the Governor of the propriety of confirming the previous concession he simply withheld further action, his signature being unnecessary. It is confidently asserted that in the whole history of grants in Florida, Louisiana and California, as well as in Colorado, Arizona and New Mexico, not a single instance can be adduced in which the signature of the Governor was ever attached to a paper in disapproval of a grant. The same history further proves that there was no place or record in the archive office for the preservation of disapprovals. If the grant was not finally approved, that simply ended the whole matter, and there was no record—no testimonio—no evidence of any kind that application had been made or any action ever taken.

It is therefore claimed that the fact of the grantees being possessed of the testimonio is demonstrative proof that the grant was finally approved, otherwise the grantees could not have been in possession of the testimonio.

It might be further contended that the missing words leave room for suspicion that the approval, at best, must have been a qualified one and not a full approval. If conjecture must be resorted to, as to what the missing words were, the most reasonable one is that the missing words (and the space in which they were written clearly indicates that there could not have been more than two) were in reference to the boundaries given by the executive officer, and might

and most probably were "Approved for the limits designated," or words to like effect.

The possession taken and held, of the whole grant, by the grantee under claim of title, is a contemporaneous confirmation of this view as to what the missing words were.

It is further contended by the Government that there being found no corresponding record in the Spanish archives the papers are not evidence. We contend that the documents in possession of the grantee being not simply copies, but original, are the highest evidence, and that having these, it matters not if the archives contain no corresponding paper. There appears to have been no regular method in the office of the Governors for keeping grant papers. In some instances the grants were given to the people, the grant itself, that is to say the grant papers, were recorded in books; at other times the original grant papers appear to have been kept by the Governor and certified copies given to the grantee. Prior to 1713 many grants were given out, of which no copies were kept, so that the practice appears always to have been irregular; and in such a state of affairs no general rule can be applied to the case in hand. (Testimony of Mr. Keys, Record p. 51.)

It is conceded that in many cases the only record of the grant existing, now is in the Surveyors Generals office, and are such papers as have been filed therein by parties in interest since the creation of the office (Record p. 53) and in addition to this it has been so often proven in cases in the land Court of the removal and destruction of the Spanish and Mexican archives, that to avoid repetition of proofs, the stipulation was entered into on Page 101 of the Record. Therefore as to there being no record in the office at Sante Fe

and by its absence concluding that there was no such grant, the case of the *U. S. vs. Wiggins*, 14 Peters 348 is in point. The court says

"Furthermore, the presumption that the original memorial and concession supposed to have been on file "in the Government Secretary's office have been lost, or "destroyed is very strong. After the papers were taken "possession of in 1831 by the authorities of the United "States they were almost abandoned in an open house, "subject to the inspection and depredation of every one; "many of the files were seen untied and the papers "scattered about the room; the doors and the windows "of the house being open there is no doubt that some "of the papers were lost."

It is conceded in this case by stipulation (See Record p. 101) not as in the Wiggins case that the room containing the papers was left open etc., but that prior to annexation the Spanish archives containing documents and grant papers pertaining to land grants in New Mexico were in fact partially destroyed and carried away by Revolutionists in 1837 and that in 1870 or 1871 all the papers in the old Spanish archives which had not been turned over to the Surveyors Generals office and in which there were many documents relating to land grants were sold to the people generally for waste paper and carried away and many of them never recovered thereafter.

Taking into consideration therefore the irregular method that obtained in the Spanish Governor's office in preserving and in giving out grant papers, as well as in making records of them and this, coupled with the positive facts so notoriously known and stipulated for as stated above, the absence

of any record of this grant or of any copy of it in New Mexican archives can excite no suspicion but on the contrary corresponds with expectations. It would have been a wonder if any paper relating to a grant to Bartolome Baca who had been prominent all his life as an official under Spanish rule, had been left by the Revolution among the archives where it could be supposed to be a benefit to him.

The decisions of the *United States vs. Teschmaker*, 22 Howard, 392, and *U. S. vs. Pico*, 22 Howard, 406, rejecting original grant papers are not parallel cases; for the reason that the grants were made so late as 1839 under the Mexican law of 1824, and in those cases there was a complete set of records preserved in the proper office where there had been no spoliation. Furthermore, grave suspicions were raised that the grants had been antedated, and were in fact fraudulent.

In the Court below it was hinted at rather than openly stated, that as Bartolome Baca, subsequent to the grant to him, himself became Governor of New Mexico, he had the opportunity of proloining from the archives the original documents produced in this case. Such an imputation was an ungracious reflection upon the reputation of a man who had been a trusted officer of his Sovereign, and was evidently held in the highest esteem in his community. But the supposition that he came into possession of these papers in a clandestine and furtive manner, at least pre-supposes that the document was among the records.

In addition, however, to the production of the grant papers we have the undoubted evidence of living witnesses to the fact of juridical possession having been given to Baca

of the very land described by metes and bounds in the grant. See testimony of Jesus Saavedra, page 65, Record, and Miguel Lucero, page 68, Record.

Besides the evidence of the *taking* possession of the grant at the date mentioned in the documents, the testimony of others, of his continuous possession from 1819 up to the date of his death 1835 under claim of title under this very grant, constitutes a chain of title both documentary and possessory that seems irresistible.

Third Point.

What was the nature of the grant—in fee—for the usufruct—complete or with conditions subsequent?

We content that with the title was in fee.

“Because the petition asks that you (the Governor) be pleased to grant the same in *real possession* in the exercise of the powers conferred upon you by his Majesty in order to establish thereon a *permanent hacienda*, which he engages to occupy with his stock, sustaining the same with armed servants who may defend it against the incursions of the enemy without abandoning it; and, if possible, to open lands for cultivation whether irrigable or dependant upon the seasons for the advancement of agriculture, and although the water sources it contains are small and uncertain, he proposes to improve them with reservoirs and other appliances which will secure every advantage possible.

The words “*real possession*,” “*permanent hacienda*,” “opening lands for cultivation,” “improvement by reservoirs and other appliances,” together with the whole tenor

of the petition, are words and language utterly inconsistent with the temporary use of the land and can only refer to a title in fee.

The Governor's preliminary order contemplates in like manner a fee; for "no injurious results to third persons," "but on the contrary increase to agriculture and stock raising under the conditions asked," refer to permanent improvements. For the ploughing of virgin soil and otherwise adapting new land to agriculture implies an expenditure that no man in those days or even in our own upon the better public lands of the U. S. would ever undertake to make for simply the temporary use of the land. The Governor directs possession to be given and return to be made to his office so that if approved the proper testimonio may be given. If it is a mere temporary *usufruct*, why the formality of a return and a testimonto to be given? Moreover it is more than doubtful whether the Spanish law ever authorized any formal grant of lands for temporary use.

U. S. vs. Huertas, 8 Peters 475, confirmed a "cattle raising" grant, where there were express restrictions against alienation.

In this case Mr. Call submitted to the Court (printed as an appendix to the volume containing a report of the case) an argument that is perhaps the most exhaustive and well considered of any reported, against the confirmation of the grant, upon the very ground that it was a grant for grazing and in terms did not contemplate a fee, but was only for the *usufruct*; yet this Court confirmed the decree of the Court below, holding the grant to be good and valid.

The return of the Alcalde giving possession, is in line with the idea of a title in fee, for after designating lim-

its he says, "and the gentleman being satisfied and grateful to the Governor, etc., binding himself to increase by his intelligence the limited waters which had been donated to him in order that his herds may be maintained, to which he is bound," etc.

It is submitted that it is a proper deduction from all the authorities that where the grantee is to make permanent improvements of any kind that would benefit the land or tend to induce its settlement, the title given is a fee, not a *usufruct*—subject only to the condition of making the designated improvements.

U. S. vs. Sibbald, 10 Peters 322.

In *U. S. vs. Richard*, 8 Peters 473 the question was raised, whether the grant was of the land or for the timber growing on it, the condition being the erection of a saw mill. The "Court says:" The grant of the tract which depends "on building a mill was obviously supposed to pass something more than was passed by the permission to cut timber until it should have effect.—"The Judge of the Superior Court construed the concession to be a grant of the land and we concur with him in this construction."

In the Baca grant the words "tract" and "wild land" appear as did the word "tract" in the Richard case upon which the Court laid stress.

In the following cases the language of the grant was not broader than the one now under discussion and yet no question was made but that in such case the fee was intended to be granted; and the same cases hinge likewise upon the performance of the conditions. In one of those cases counsel has classified the grants made in such a clear manner that his classification is herein presented.

Grants appear to be of three kinds.

1. Absolute grants in consideration of services already performed.

2. Grants in consideration of services to be performed, and deemed especially important for the improvement of the province. The services appear to be of three kinds; the erection of saw mills, factories or mechanical works. The introduction and raising of large numbers of cattle and the establishment of large bodies of settlers. The titles of these are in some *instances absolute on their face and convey a present grant from their date, though coupled with conditions for the subsequent performance of the specified services;* or they were concessions or incipient grants securing a future absolute title on performance of conditions. Absolute titles in first instance are cases of *U. S. vs. Arredondo*, 6 Peters 745 and *U. S. vs. Clarke*, 8 Peters 441.

3. Grants of small quantities of land for purposes of actual cultivation and occupation.

The Baena grant clearly belongs to the second class and to the subdivision "absolute grants with conditions subsequent." Other cases confirming this classification are as follows:

U. S. vs. Wiggins, 14 Peters, 340.

Case of Sequi, 10 Peters, 306.

Seton's Case, 9 Peters, 311.

Sibbald's Case, 9 Peters, 313.

U. S. vs. Mills, 12 Peters, 215.

U. S. vs. Kinsley, 12 Peters, 477.

All these cases affirm the doctrine that the performance of conditions, (and in some instances the conditions were not fully performed owing to insuperable impediments) makes the titles indefeasible.

In the *U. S. vs. Clarke*, 9 Peters, 170, Marshall, C. J., said:

"A concession on condition becomes absolute when the condition is performed."

The conditions of this grant were according to the petition "To establish thereon a *permanent hacienda* which he engages to occupy with his stock, sustaining the same with armed servants, who may defend them against the enemy without abandoning it; and he will also, if possible, open lands for cultivation, whether irrigable or dependant on the seasons, for the advancement of agriculture, and that he would improve the small and uncertain waters with reservoirs and other appliances. In the act of juridical possession the condition is expressed in these words, "binding himself to increase by his intelligence the limited waters which have been donated him in order that his herds may be maintained, to which he is bound."

The testimony of Barto. Chaves, y Baca, Record, p. 26: "I went there (Torreon) a good many times after Baca died. Thirty families were living there. There was one very long ditch about four miles. There were two laterals. They irrigated gardens with it and little pieces of land, amount of land cultivated about a mile long and a little less of width. They were old ditches." To the same effect is the testimony of Jose Antonio Padilla, Pages 38, 39, 40 Record, Miguel Luceo, P. 68, Clemente Chaves, P. 74, Record, Matias Sanches, Page 76. Other testimony, *passim*, shows conclusively and without contradiction not only the waters "improved" by the construction of Acequias and the cultivation of land, but also that Baca erected a block-house at Torreon, that he established houses and

headquarters for his ranchmen, and that his herds, consisting of sheep in different bands aggregating from fifty to seventy thousand head, together with horses and horned cattle, under the charge of herders, were in full possession of the grant from 1819 until his death.

The Court below finds the fact to be that the tract called Torreon (which meant the entire grant and not simply the particular place afterwards called Torreon, because of the erection of the block-house there), had been in the actual possession of Baca for more than four years from the date of the grant on September 12, 1819.

"The four years are mentioned presumably upon the theory that it must have been occupied at least that length of time in order to comply with the law (2 *White* p. 49), and this law expressly says that the settlers "from the expiration of said term are hereby empowered to sell the same and freely to dispose of them at their will as their own property." (2 *White* 283). It must further be said that this finding of fact by the Court below implies that Baca had complied with the condition during that time, otherwise they scarcely would have found as matter of law that he was entitled to a confirmation of any part of his title. But whether the time for the performance of the conditions is three months (2 *White*, 51), or four years (2 *White*, 49-283), or ten years (2 *White*, 54), *Mitchel vs. U. S.*, 2 Peters 261, (and in the case of ten years possession even executive action is barred (2 *White*, p. 86) the finding of the Court is that Baca occupied the land for *more* than four years and the evidence that convinced the Court of this occupancy, fully establishes the fact and compels conviction that there was a

continuous occupation until the day of his death in 1835—a period of 15 years from the date of the grant.

In *U. S. vs. De Morant*, 123 U. S. 335, objection was made that no evidence was given of cultivation as required by the grant. The Court says—

“as to not cultivating the land it was proved very conclusively on the trial that the grantees actually built houses and resided upon it shortly after the date of the grant. “We cannot hesitate to conclude therefore that these titles were complete within the time required by the act 1860.”

But we are not left to conjecture or inference, for as we stated above the testimony everywhere shows that Baca erected his block-house, constructed houses for his employes, began a system of irrigation—one witness testifying that in 1829 the main acequia was about four miles long and that it appeared at that time an old ditch—these improvements together with the great herds maintained and watched and cared for by his employes and sons establish beyond question a most liberal compliance with the terms of all the conditions.

It is also in evidence that in 1822, Record, p. 73, p. 76, p. 42, the Indians were committing depredations and that campaigns were made against them, and “that Baca attended to that.”

Some objection was made before the Surveyor General that as Baca never lived upon the grant, therefore he never had possession of it. Such an objection might be made with some force if the grant were a town lot or a small piece of land where from the nature of it residence would be required, but the grant papers do not furnish grounds for any such,

implication. Furthermore, residence was not required by Spanish law as the same is set forth in 2 White, 84, "Possession is the legal holding or enjoyment of the thing with the intention of excluding others from it;" and again "a civil possession as it is called is when a person goes out of his home with the intention of not relinquishing it and this is as valid as though he were in corporeal possession of it." The giving of juridical possession was the first act and when that was accomplished no further corporeal possession by the owner himself was necessary. He might under the Spanish law as under our own law hold his possession by his agents or tenants, and that was what was done in this case.

It is thus conclusively shown that every condition required by the terms of the grant had been fully and completely complied with by the grantees before 1835—so that in any view of the legal time requirements, he had fully discharged all his obligations.

If this is the case then the grant having been absolute in the first instance, but with conditions subsequent was complete and perfect by performance of conditions before and at the time of grantees' death and his title to the whole tract should have been confirmed by the court. The act of Congress creating the Court of Private Land Claims in section 6 directs a petition to be filed in said Court for confirmation of grants which are not complete and perfect at the date of the passage of the Act.—Section *eight* provides for the presentation of claims that were complete and perfect at the date when the U. S. acquired Sovereignty. And section 13 division 7 refers to claim mentioned in section 6, which are not already complete and perfect at the time of the transfer

of the Sovereignty to the U. S. and limits their confirmation to eleven square leagues.

If then, conditions were performed in 1835 or afterwards, but before Sovereignty was acquired by the U. S., the confirmation should have been for the full amount contained within the boundaries.

Fourth Point.

It is contended by the learned counsel of the Government that in as much as the Eastern boundary designated in his return extends the Eastern boundary beyond the point mentioned in the petition, it was an officious act of the Alcalde and void.

It is decided that if a grant was made within certain boundaries, ascertained by natural objects, such as hills, mountain peaks or other natural objects, the grantee is entitled to all the land within those boundaries.

Higuera's Heirs, 5 Wall, 827.

Now the grant was not finally made until return was made by the Alcalde and approval had. Before that time it had no existence. The confirmation of the Governor was the one act that fixed the right of the grantee, and that final act was based upon the return and, necessarily in this case, in confirmation of that return. It cannot be supposed that the Governor was deceived or that he omitted to notice the discrepancy, if any real one existed, between the description in the petition and that in the return, any more than he would be deceived or failed to notice any other matter that was submitted for his official inspection. Further, the return, extending the Eastern boundary was in no sense an officious intermeddling; for in his commission the officer

was especially ordered to "designate the boundaries." The petition was evidently not intended to specify, except in the general, the land asked for, that was left to the granting power, in-as-much as the executive officer was the most proper person to give in detail the limits of the grant. It was so done.

Furthermore, the act of the executive officer, besides conforming exactly to his instructions, corresponds with what we know must have been the intentions of the petitioner in making his request and of the Governor in granting it. For, although he asks for land "to the Estancia spring," the nature of the country, the value of a water right and the absolute necessity for such a right for the enjoyment of the land forbids a construction that would extend his concession only *up to* the spring but exclusive of it. And if on examination it was found that the natural overflow from the spring was to the East, the grant to be effective must have included the land that was benefitted by such overflow. Hence, the extension to the Pedernal mountain. The land between where the overflow stopped and the mountain was absolutely useless to anyone for any purpose and the mountain was evidently the natural boundary and so it was fixed as the Eastern limit.

Fifth Point.

Was there a forfeiture?

It was argued by the Surveyor General and his decision appears to be the basis of the Government's contention now, that the grant to Baca was forfeited by the fact that re-grants were made by the succeeding government of portions of Baca's land and that these re-grants were conclusive evidence of a forfeiture.

The whole tenor of the Spanish law is contrary to this proposition. For it was axiomatic "that those things which the King gives to any one cannot be taken away from him by the King or any one else without some fault of his (2 *White*, 99).

Strother vs. Lucas, 12 Peters, 443.

The only instance in which property once given could be reclaimed by the former owner, was in the case of a leasehold where the rent was not paid—which *ipso facto* forfeited the estate—and it is added "without it being necessary to have recourse to the authority of a judge." (1 *White*, 86).

It is undoubtedly the law that before land once granted could be regranted, a proceeding judicial in its nature should be had to declare the forfeiture. This was recognized by *Mitchell vs. U. S.* (9 Peters, 743.)

Arredondo's case, 6 Peters, 737.

The Spanish Government recognized this to be the law that "the estate granted was not afterward liable to be devested except by regular proceedings on denunciation."

Henshaw vs. Bissell, 18 Wallace, 255.

Hornsby vs. U. S., 10 Wallace, 238.

Opinion of Mexican Attorney General cited in Antonio Baca grant. Private land claims, 1874-5, page 81. Executive Doc. No. 62, 43d Congress, 2d Ses. H. R.

Even where it appeared that two complete titles were given for the same land the presumption would be that the junior title issued by mistake rather than the elder title had been forfeited. This is the case in our law and the reason

of it should make it applicable in the Courts of the remedy, to grants under any law.

Fletcher vs. Peck, 6 Cranch, 87.

It is true that in Louisiana it was held in a number of cases that the re-granting of land previously granted *where the second grantee had the possession and had made improvements* conferred, the better title and the first grant was presumed to have been forfeited without a formal denunciation. The possession and improvements of the second grantee are the explanation of the doctrine. From the nature of things the second grantee could not have possession and have made improvements without the land having been vacant, it either never having been occupied or else abandoned by the first grantee. It would be no violent stretch of presumption, therefore, to visit upon an abandonment the penalties of a forfeiture. It is submitted, therefore, that the language of Judge Catron, in his separate and partially dissenting opinion, in *U. S. vs. Reading*, 18 Howard, 16, was predicated upon the fact of an open and notorious abandonment by the first grantee. What he contended against was that a bare grant unsustained by evidence of any performance of conditions could secure the title, and he denied the correctness of the inference that might be drawn from the general language of the court, "that every incipient grant by Mexican authority secured the land to the grantee without the performance of any condition," and afterwards, held the rule to be "that where the Spanish authorities have granted the same land twice, and the younger grantee has *taken possession and performed the conditions of inhabituation and cultivation* he is entitled to hold the land.

The same learned Judge reiterates the same doctrine in his dissenting opinion in *Freemont vs. U. S.*, 17 Howard, 442, citing *U. S. vs. Boisdore*, 11 Howard, 96.

This same doctrine is fully set forth in the judicial opinion of Saavedra, (2 White 289,) as being the law in Florida.

This doctrine, though by a single judge, does not militate against the claimant in this case. For here there is not a particle of evidence that there was ever a relinquishment of claim or an abandonment of possession, but it is almost conceded that there was a continuous possession by the grantee until his death and that he had fulfilled every condition required.

Furthermore, there is no proof submitted that any of the second grantees ever were in possession of any part of the grant or ever made any improvements thereon, temporary or permanent, saving and excepting only the towns to which reference will be made. So that the cases referred to in Louisiana, as well as Judge Catron's opinion, present no analogy to the case in hand.

Moreover this constructive forfeiture, based as it is upon the actual abandonment by the first grantee and occupancy and improvements made by the second grantee can logically be applied to no more land than was actually occupied and improved by the second grantee. There is no authority in any of the cases referred to that would justify the conclusion that the whole grant of Baca had been forfeited because small portions of it had been regranted and (conceded for the purposes of argument) occupied by the second grantee.

As to the towns—Manzano, the land for which was granted in 1829, is now ascertained to be located wholly beyond the southern boundary of the Baca grant.

Tajique was granted in 1834, the year before Baca's death, and the town of Torreon was not granted its land until 1841. It is in evidence that it was at Torreon that Baca first made his improvements by the construction of acequias and the erection of his block-house and Mariano Tores in 1878 testified before the Surveyor General "that "Baca before he died permitted families to go and occupy the "place (Torreon) and it is in this way that there is now a "town there, he inviting the families to go and live there on "account of the protection their presence there would afford "to his interests there against the Indians." If it is positively shown that Torreon was settled in this way by his invitation and in furtherance of his interest, a like inference must be drawn in the case of Tajique, which is in a proximate locality to Torreon. This is strengthened by the fact that Tajique was given its land before the death of Baca, and of course when he was in possession and presumably, therefore, with his consent. In 1841 also, Chilli received a grant. It must be remembered that these dates were only the dates of the grant, and at that time the inhabitants of those towns would most likely have been in possession for a long time previous. As it is positively shown that settlement in different localities on his grant of limited spaces was a part and parcel of Baca's plan of settlement; the conclusion is, therefore, inevitable that he originated the other towns, and that they were all settled, not only with his acquiescence but with his active co-operation. So far, therefore, from these town grants being evidence from which to infer a forfeiture—

they rather strengthen his claim of ownership. The town grants were evidently conceived in the spirit of the Spanish law for the formation of municipalities, through which by a system that was prevalent in New Mexico, individuals could obtain allotments of land.

The bill filed in this case concedes the right of the towns to their town lands, and disclaims all right to the same. This disclaimer assures the titles to the towns with the same effect as if the forfeiture theory had been adopted, but with this difference only, that it saves donations to these towns by Baca from being ungraciously distorted into a forfeiture.

There are two other individual grants that conflict with the Baca grant—first, that to Nerio Antonio Montoya in 1831. It pretends to be made by the territorial deputation and not by the Governor. Under the authority of *U. S. vs. Vigil's Heirs*, 13 Wallace, 449, and *Fan Reyuegan vs. Bolton*, 5 Otto, 33 (95 U. S., 33), it is null and void for the reason that under the law of 1824 and the regulations of 1828 the territorial deputation had no power to make a grant. Furthermore, it was made in 1831, during the life time of Baca, and whilst he was in the actual possession of the whole tract, and the grant petition studiously avoids stating that the land was vacant, or that its grant would injure any third person, but simply says that it was "uncultivated, and that it would not be injurious to the inhabitants of this jurisdiction in regard to pasturing and water for their live stock, owing to the barrenness of the canon in which this tract lies." In this case there is no evidence that any possession was ever taken or improvements made under this Montoya grant.

The grant to Antonio Sandoval in 1845 is open to quite as many and as fatal objections.

1. It was in compensation for past services rendered the country and was for grazing. The law of 1824 and the regulations of 1828 recognized no such power in the Governor. *U. S. vs. Vallejo* 1 Black, 541.

2. There was no concurrence by the departmental assembly.

Beard vs. Federy, 3 Wall, 478.

3. The grant was for land largely in excess of the quantity allowed by law.

4. It does not appear anywhere in the paper of the grant except in the petition that the land was vacant and unoccupied. *U. S. vs. Workman*, 1 Wall 745.

Moreover there had been made to Sandoval prior to this alleged grant two other grants, The Bosque del Apache and Agua Negra, both confirmed by Congress in 1860, one of 60,117 acres and the other 16,000 acres. The Supreme Court has held that there could not be granted to anyone for his individual use more than eleven square leagues, *U. S. vs. Hartwell*, 22 Howard 286; *Colorado Co. vs. Comm'r's*, 95 U. S. 264.

Complainants thus having shown a documentary title; a possession practicably continuous since 1819; full compliance with all conditions before the acquisition of New Mexico by the U. S.; and further that no judicial or other proceedings to formally divest the estate had ever been had, and that the town grants, by every presumption as well as by evidence, are shown to be in subordination to the express desire of the original grantee;—and finally that both of the

grants of Montoya and Sandoval are invalid, the claimants in this case pray the Court, in reversing the decree of the Court below in restricting title to 11 square leagues, to decree that the Bartolme Baca grant, before the date of the acquisition of New Mexico by the United States, was a complete and perfect grant for the land embraced within the established boundries, and thereupon to remand the case for further proceedings conformable to the act of Congress.

T. B. CATRON,

J. D. O'BRYAN,

Solicitors for Claimants.

IN THE
Supreme Court of the United States.

OCTOBER TERM, 1896.

No. 279.

ELOISA L. BERGERE, for herself and the other heirs of MANUEL ANTONIO OTERO and MIGUEL ANTONIO OTERO, Appellant,
vs.,
THE UNITED STATES.

No. 299.

THE UNITED STATES

vs.,

ELOISA L. BERGERE, for herself and the other heirs of MANUEL ANTONIO OTERO and MIGUEL ANTONIO OTERO, Appellee.

Argument for Appellant.

The grant was asked for a tract of land called Torreon which the petition said "extends" to certain natural objects mentioned, to establish thereon a permanent ranch or hacienda, which the petitioner undertook to occupy with his stock, sustaining the same with armed servants, who may defend it against the incursions of the enemy without abandoning it, "and that he must, if possible, he would open lands for cultivation . . . for

the advancement of agriculture," that he proposed to improve the water sources by reservoirs and other appliances which would secure "every advantage possible, and prayed possession with proper documents.

The petition does not say the tract called Torreon extended no further than the natural objects mentioned, or stopped at them; but that it extended to them; it may have and did extend further, as found by the judge who gave the juridical possession. We may say the Potomac river extends to Mt. Vernon on the south and Harper's Ferry on the north, but it does not necessarily stop at either of those points.

The Governor made the grant as follows: *As he asks it according to law*, and I understanding no injury results to any third party, on the contrary, increase of stock raising and agriculture under the conditions asked." The word "granted" is understood as preceding the words "as he asks." To what do the words "under the conditions asked" refer? Certainly not to the grant; that is qualified by the words "according to law;" they can only refer to the fact that under the conditions asked an increase of stock raising and agriculture would be accomplished, and that no one would be injured. After the grant in the first clause, p. 9, the Governor directs by the second clause that "Don Jose Garcia de la Mora will proceed to give possession, designating limits and doing what is proper, which being concluded he will transmit the expediente to this superior office, so that if it be approved the proper testimonio may be ordered to be given to the petitioner."

The first clause is the grant and is for the petitioner. The second clause contains the directions and authority to his subordinate, the judge, as to what he should do in the premises. What is the requirement of the second clause? To give possession, designate limits, and do what is proper, and to transmit the expediente to the Governor.

If the full limits of the tract of land called Torreon had been correctly designated in the petition, why say "designating limits?" They would be already designated. This is a construction placed on the natural objects specified in the petition by the Governor, who evidently did not consider the tract of land was *bounded* by these natural objects; he certainly granted the tract, and there could be no reason to go further than to say granted "as he asked it, according to law." "As he asks it" would certainly refer to the description or designation of the land; then the addition of the words "designating limits" shows that the natural objects were not the definite boundaries necessarily, but only served to show in what particular locality the tract would be found.

The judge in giving possession shows how he considered the grant. He first shows Melgares was Governor, not Lieutenant Governor as alleged. He says "I have proceeded in his company to examine the tract he applied for I have placed him in possession . . . and I designated to him for his boundaries on the south the Ojo del Cuervo following its line to the Ojo del Chico; on the east, the Cerro del Pedernal; on the north the Ojo del Cibolo; on the west, the Altura de la Sierra the said gentleman being satisfied and grateful to the said Governor, &c., binding himself to increase by his intelligence the limited waters which have been donated to him in order that his herds may be maintained, to which he is bound." (p. 9)

It will be seen they proceeded to examine the "tract he applied for," that he "designated to him for his boundaries" certain natural objects. These differ on the north by using Ojo del Cibolo (Ojo is a spring) instead of Monte del Cibolo stated in the petition. On the east he designated Cerro del Pedernal instead of Estancia Springs, and on the south he designated Ojo del Cuervo, *following its line to the Ojo del Chico*.

This latter designation shows why the south boundary on the map is not straight. The Ojo del Cuervo is situate where the line going from west to east bends to the south of east; it so bends to form the line from it to the Ojo del Chico and is correctly designated on the map and leaves Manzano out of it. This was a compliance with the direction of the Governor to designate limits, and as only the *tract* was granted, he must find its limits and designate them.

The condition fixed by the Judge (not the Governor in the grant) is that he must increase "by his intelligence the limited waters which have been *donated* to him *in order* that his herds may be maintained."

The proofs are abundant and incontrovertible that Baca took possession at once, built a house and kept his stock there, consisting of many thousand head of sheep, hundreds of horses and cattle; that his sons and servants lived there, and he frequently visited it to look after the same; that acerquias to carry water were constructed, and some land was cultivated. Testimony pp. 23, 27, 36, 39, 40, 41 and 42, 65, 67, 68, 70, 71, 72, 73, 74, 76, 79. There was certainly a continuous occupation by Baca for 16 years from date of the grant until his death, and his wife and grandchildren—children of his sons who had died—occupied it afterwards for many years. The evidence shows it was recognized and respected by all as Baca's property during his lifetime, and after his death, as that of his heirs.

It is claimed that Baca abandoned the property. How? For 16 years, while he lived, he kept his stock there; his sons and servants lived there and one son died there; they had families, and their children lived there afterwards. He built ditches for water, cultivated land, had 75,000 sheep and 300 horses and 900 cattle there. If Indian troubles compelled him to remove his stock, he took them back. When can it be said he abandoned the property?

It is said he does not mention it in his will. But the will does not purport to mention all his property. It mentions property belonging to him, but does not say it is all he had. If it did, still he might have forgotten it, or what is more likely, he may have given it to his sons or children, as it appears by his will that he did not therein enumerate all the sheep, cattle and horses the evidence showed he had on the ranch. The custom of the people was, as they grew old, to divide their property among their children, reserving enough for their own support, and without doubt he did so in this case, giving to his sons the land and most of the live stock of this ranch. As his sons occupied the property and held the possession, which is evidence of title, it could much more properly be said the will shows Baca had parted with his title, to them, than that he had abandoned the property. He kept some of his stock, and the evidence shows that after his death it was rounded up on the property and handed over to Baca's widow, who placed another mayor-domo (boss) in charge, p. 68. She was the executrix. As all acquired property belonged equally to the husband and wife, it may be that the ranch and much of the stock was divided by him and given to his wife; certainly his heirs continued to occupy and claim the property after his death in 1835, pp. 30 and 36.

Baca's grandsons lived at Torreon after Nerio Montoya returned. In 1841 they were there. (see p. 36). Clemente Chaves testified, pp. 79 80, that the heirs of Baca, after his death, claimed the property; that after the death of Baca the property was recognized and respected as the property of Baca's heirs, and other evidence showing claim of title and occupation at Torreon.

The proofs show possession of this property for 16 years during Baca's life, and after his death, by his heirs for at least 20 years more. After the grant was made there was a change of

sovereignty, first to an Empire under Yturbide, and then to a Republic. These changes had the same effect on this title as the change when the United States took charge. Baca was in full possession when Spain lost the country and when the Empire and Republic assumed control. Conditions subsequent were no longer required to be performed, if any attached (Fremont's case, 19 How). The decree of the Court of Private Land Claims finds the facts; it is O. K.'d by Reynolds, U. S Attorney, pp. 102 and 103. In the first finding that court say: "That on February 4, 1819, Bartolome Baca presented his petition to the then Governor of the Province of New Mexico, Facundo Melgares, setting forth that he had registered a piece of vacant land which was called Torreon; that said Governor made said grant, as petitioned for on July 2nd, 1819, and directed Jose Garcia de la Mora to give possession designating limits and officiating duly; that afterwards, to wit, September 12, 1819, the said official gave the said Bartolome actual possession of said tract of land called Torreon, petitioned for, "thus finding that the possession of the identical tract was given as prayed for, and that the grant was made as petitioned for. These were findings made by a court which heard the evidence, except such as came from the Surveyor General's office, and such court is better qualified to judge than a court of review. The findings of a court or master in a chancery case takes the place of a verdict of a jury.

Where the court obtained its idea that the grant was imperfect, it is hard to guess; it is made without any conditions absolute in terms, except the improvement of the waters sufficient to maintain the stock, which it is shown were for over 16 years maintained there, during the life time of Baca and even after that, and it is also shown that acequias or water ditches were taken out and existing there as old ditches in 1829-30. Can any one doubt that Baca had enough water to maintain his stock?

If he had, the condition was performed. He had done more; he took out irrigation ditches for cultivation and cultivated the land; had houses and servants and his sons on the property. No pretense is made that he did not perform the conditions.

It is asserted the grant was to be approved after possession. The order is that the "expediente" be returned so that if "it" be approved the proper testimonio might be given. There can be no doubt that it was returned. The signature of Melgares, the governor, omitting the letter "M," is at the foot under some endorsement claimed in the last brief to be "d los limites por." If the "d" is not an abbreviation of *de*, which it is when used and standing alone, but is the last letter of a word ending in *d*, it was doubtless the last letter of the word "propiedad," meaning property, or of "merced," meaning grant. It might be the endorsement was "apruebo como la merced los limites por el juez designado," meaning I approve as the grant the limits designated by the judge; or if it was the abbreviation of "*de*," it might be "aprobado hasta la extension de los limites por el juez designado," meaning "approved to the extent of the limits designated by the judge." These are, however, merely speculative ideas—guesswork. But there can be no guesswork as to the fact that the grant was returned to the governor and was in his possession and endorsed by him. This establishes it as having been in control of the government, and it afterwards being in the iron box of Baca, and coming from the possession of his heirs, it can be accounted for on no other reasonable hypothesis than that it was given to Baca as the evidence or testimonial of his title.

It has been shown by the evidence of Key, pp. 51 and 52, that there was no regularity in the practice of making grants. Sometimes the original was given to the party and a copy kept; sometimes a record was made and the original given, and sometimes a copy was given and the original kept.

The government has waited nearly fifty years before allowing the claimants to commence this action. In the meantime all the persons who would have knowledge of the facts of this grant, and the mode in which the evidence of title was given, have died. The archives in 1837, after Baca's death, were partly destroyed, and again in 1870 i destroyed, sold or lost (see stipulation p. 101.)

Can the government, for such long time being guilty of laches in carrying out its treaty stipulations, be heard to raise objections to a custom or a title which is admitted to be original and coming from proper hands, after fifty years of possession, and the witnesses all dead? It would be against good conscience to do so. Long lapse of time compels the adoption of the best evidence which can be obtained. While grants must be construed strongest against the grantee, yet the rule as to proofs and laches are construed against the party at fault. Here Baca took possession, complied literally with the terms of the grant, held it up to the time of his death, and his widow and executrix held it after him, and some of his descendants remained in possession until very lately. His acts, and the facts which are undisputed showing a claim to the property by him and his heirs and a long possession inconsistent with the claims of the government, establish conclusively that the grant was made, and the grant papers delivered to Baca by the Governor.

But it was not the grant or the acts of the judge which were to be approved : it was only the "expediente." The grant was perfect, not "incipient" as claimed. There is nothing which implies that the expediente was not to be given out. The "proper testimonio" it was said would be given. What is the "proper testimonio?" It has been shown it was sometimes the expediente, sometimes the copy. Why was not the expediente a "proper testimonio?" A record could have been made, a copy could have been kept, or even no record or copy. There is

no proof or law before the court showing that there was any requirement prior to 1824, under the Mexican colonization laws that the originals of a grant should be kept in the archives, nor that there was such custom. Mr. Keys' evidence, pp. 51-52, which is uncontradicted, shows there was no uniform practice; sometimes one, sometimes another practice prevailed. Sometimes no copy was kept or found, nor any record.

It would seem the government ought to have kept something to show that the land had been granted, and doubtless did, but the destruction of a part of the records in 1837, and the sale and loss of others in 1870-71 (see p. 101) accounts for the same not being found. This was so decided in this court in the case of U. S. vs. Chaves, 159 U. S.

The Governor did not say a testimonio should be given. He said "so that if approved a '*proper* testimonio, &c. be given." What is the "*proper* testimonio?" Who was to be the judge of what was proper? Surely the Governor; he was the sole authority and his *acts* are conclusive and binding, unless it can be shown that there was a law requiring something else, absolutely.

It is surmised by the U. S. Attorney that the original papers were given to Baca to take to the Comandante General and get his approval. This is not probable or supposable. The Governor would have transmitted the paper with his recommendations if that had been required. Under the *Ordinanzas de Intendentes* the powers of the Governor of New Mexico remained the same as under the law of 1754; they were not changed in the least. The Comandante General was a species of viceroy representing the King, with the powers of the King; he took no authority away from the Governor—only had a superintending control such as the viceroy in Mexico before him, or the King himself. The fact is that in a majority of the grants in New Mexico the original

expediente was given out. It is rare that the original, or a record of one was found in the archives, except those of very early date. The Mexican Congress and regulations in 1824 and 1828 provided for a record to be kept, but nowhere under Spanish law was one provided for, nor was the practice ever established that it was absolutely required. Every case of rejection of a grant for want of record is under the *Mexican law* where a record was expressly required.

The Comandante General had no express power to make grants, or to revise everything the Governor did, except on appeal or objections made to him. His power, like the viceroy's was supervisory only. On appeals to him he could correct errors and irregularities and want of authority. No power was conferred upon him to make grants; that power was conferred on the Governors of New Mexico expressly, and was never modified or taken away from them. The Comandante could make rules and regulations modifying or changing the existing laws, but if he did not, the laws remained. He could direct grants to be made, and where the public use or service was involved, he could possibly revoke, but until appealed to, the regulations and practice continued uniform. If it is sought to extinguish the authority of the Governor, he who contends for it must show the law or authority for it. None has been shown or can be shown. It does not exist. The Governor of New Mexico never was under any regulations as to making grants other than the law of 1754, until changed in 1824. This authority was universally exercised and acquiesced in (see stipulation record, pp. 101-2), which shows a number of grants made by Melgares, some confirmed by Congress direct, some by the Court of Private Land Claims and acquiesced in, and others pending. The records are full of grants made by Spanish Governors and are held to be perfect. Because the Comandante had a supervisory power over the Governors, it

did not imply that every act of the Governor should be submitted to him before it became binding or final. In the absence of the exercise of the supervisory power by the Comandante, or any regulations for its exercise, we must assume the action of the Governor was unquestioned by him.

"The confirmation of similar grants made by acts of Congress or Boards of Commissioners acting under their authority, are also powerful evidence of the lawful exercise of the authority by these officers; and being proceedings under the treaties and laws, they are made a rule by which, among others, we may adjudicate on the claims of the present parties (Mitchell v. U. S., 9 Pet., 741.) It will be seen that several of the grants stipulated to have been made by Melgares have been confirmed by Congress. Several others have been confirmed by the court of Private Land Claims.

The claimants in this case purchased the lands in question on the faith of the action of Congress in confirming other grants. They have a right to rely upon that action in similar cases as being a rule of property wherein Congress held that this same officer had a right to make the grants. Is not the United States estopped by such action? The various cases cited as being cases wherein the Comandante General interposed in matters of grants are each special in themselves and only show the exercise of a certain superintending control, and do not show that any rule or regulation existed whereby that control or exercise of authority was to be invoked. On the contrary, each particular case is controlled by the special circumstances surrounding it and governing it.

Citation is made of the action in the grant made by Manrique. In that case it was proven, and the court so held, that the pretended action of Manrique was a forgery and the grant was rejected for that reason. It is contended that Melgares never went beyond an incipient grant—that the title was

only inchoate an equitable. The Governor of New Mexico, and all other Governors, were the direct representatives of the crown. In U. S. v. Clark, 16 Pet., 228, it is said, Spain had power to make grants in any way and on any conditions, and when they were binding on that government, they were binding on ours.

This grant was made in 1819. Within two years thereafter the sovereignty of the country changed and a legal Empire took the place of the Spanish authority, and in a few months thereafter, a Republic took the place of the Empire. But it is insisted that there was no incipient character to this grant. The Governor distinctly says, "As he asks it according to law," meaning thereby *granted* as he asks it according to law. There is no condition at all to that grant. The grantee could not be held responsible for the proper performance on the part of the judge of his duties; it was the duty of the officers of the government to act properly. Neither could the grantee compel the Governor to give him a particular kind of paper as evidence of title. The grant in this case is admitted to be genuine. It is admitted that it came from the hands of Bartolome Baca. It is admitted that Baca was placed in possession, and conclusively proven that he remained in possession for at least thirteen years after the change of sovereignty in the country. It is admitted that his wife took possession immediately after his death, and that his grandchildren were upon the property in 1841, and that all the time it was acknowledged and respected as his property. These facts are clearly proven, unquestioned and uncontradicted. No grant can be considered incipient or inchoate which is absolute in its character, made by a party authorized to make an absolute grant, and given without conditions, or if given with conditions subsequent, and these conditions performed. The contention of the government that this grant was inchoate is rather shallow.

It is contended that Melgares looked to the Comandante General as the official authority to make the grant requested, and that he referred Baca to that official instead of assuming to make the grant himself. Where is the proof of such fact? There is not a hint throughout the entire grant that Melgares questioned his own authority. If he had authority he certainly exercised it when he made an unqualified, unquestioned grant. The United States Attorney contends that the grant, as made, was only permissive. How the language of this grant can be construed into permissiveness, is hard to see. There is not a single thing either in the grant or in the act of juridical possession, or in the petition for the grant, which intimates that Baca only asked permission, or that the Governor only gave permission, or that the judge only gave a permissive possession which might be vacated. If such were the case, the long continuance of Baca in the possession, with his heirs, according to the decision in U. S. vs. Chaves, 159 U. S. p. would establish a presumption that the grant which was made had been approved by the higher authority, if one was required to approve it. If in a case like that of the U. S. vs. Chaves, without any proof whatever (as in that case) that there had been any record in the archives at Santa Fe, either by way of an original or a copy or a register of that grant, or that it had been returned to the Governor, it can be assumed that a grant was made because the parties had been in possession since 1835, for a period of about 50 years, only a 11 years of that time being under the Mexican government, and that under a grant claimed to be made under Mexican authority where the law expressly required a record of the grant (more than was required under the Spanish law) then much more will a grant be presumed where the parties have been in possession 40 years—twice the length of time the court says was required in that case, and more than 20 years of that time under Spanish and Mexican

rule before this country acquired the property and established a different system of land titles.

If the Chaves case, above cited, was good law, certainly the principles of that case are applicable to this one, so far as the presumption of a grant is concerned. So that if in any event it can be claimed that the authority of the Comandante General was to be invoked, we have the presumption that it was invoked by the operation of the rule of prescription.

But we contend that the endorsement of Melgares, at the bottom, is evidence that the title in this case was returned and became a public document, which the Governor could deliver out to the grantee if he saw proper. It was under his control. It was the "proper testimonio." While it was not a strict technical testimonio in the literal definition of the word "testimonio," it was what the Governor spoke about as a "*proper* testimonio," being such a testimonio as he qualified by the word "proper," and what he meant by the word "proper" was what he should determine to be proper.

There is no instance of record, or known amongst any of the papers, where after a judge had given possession of a tract of land, he delivered the original papers to the claimant to be returned to the Governor. Frequently he delivered the original papers to be kept by the party as evidence of title, and when original papers were returned to the Governor, they were required to be submitted to no other authority. The Supreme Court has stated that when required under Mexican law it was the duty of the Governor to submit them, and that the claimant was under no obligation to look after them further. But this applies solely to Mexican grants and not to Spanish, as there never was a case where it was held that the Governor was required to submit his action to any higher authority by operation of any established regulation or law, and wherever he did so it was his own voluntary action or by virtue of a direct order.

from the higher authority, and only in the particular case in which it was done, without reference to any rule or regulation whatever.

It is submitted that a perfect title given to a party, even though there be no record or memorandum of it in the archives, is good when accompanied with clear and notorious acts of possession and user in the mode required, as is given in this case. The authorities all state such to be the case, and it has been permitted in many instances where there is no evidence of a record of a grant, and no evidence of the existence of a grant, except parol evidence to prove the grant when a notorious and continuous possession has been shown for a considerable time. It is insisted that the government has not shown that Baca could not have possession of the original papers unless for the purpose of transmitting them to the Comandante: That is a mere suggestion and surmise without any proof of any law or custom to support it.

Grants have been confirmed which were made verbally, and open, notorious possession and proof of the verbal grants have sustained them. It is possible that the original grant in this case was delivered to Bartolomo Baca, to be by him carried to the judge, Mora, in order that possession might be delivered. That was evidently the custom, but as the grant itself designated who should give the possession, and what the officer should do after he gave possession, and as the officer himself says that he individually returned the grant to the Governor in order that he might do what was right and just in the matter, it cannot be questioned that the grant was returned to the Governor and was in the possession of the Governor. Being once shown to be in the possession of the Governor, as a grant, and afterwards in the possession of the grantee, it seems that the record is thoroughly established,—that is, of the existence of the grant in the hands of the authorities at one time, and that

existence is proven by the endorsement of Melgares at the foot of the action of the judge, and by the certificate of the judge himself that he actually returned it.

There is no law pointed out in any manner that shows that a Governor of a Territory, under Spanish authority, had the power to make inchoate or incipient grants. The custom which they exercised from 1754 down to the independence of Mexico was to make grants absolute. They had no authority to proceed otherwise than to make a perfect grant, except where they granted a given amount in a larger tract, or attached conditions to be performed before the grant took effect, and certainly Melgares in this case undertook to make a full, complete and perfect grant, it was granted for a "*permanent ranch or hacienda,*" and not to give permission, or to grant on condition of approval of any superior authority. The only approval that he provided for, was that the expediente should be returned to him so that it might be approved. That must be as to its form or as to what was really done, if anything was done. But if the action of the judge upon its face shows that it was in strict accordance with the directions of the Governor, and was afterwards received by the Governor, and there was nothing in conflict with the authority given by the Governor, certainly it can not be presumed when it was indorsed in some manner and re-delivered as title to the grantee, who took possession of the land held and claimed it for 16 years and whose heirs afterwards continued in possession and claimed it for 20 years or more thereafter, that such was not a full and complete grant. There is no equity in this case; there is a full and complete legal title, in our judgment. And as the Governor had full power to make grants of unlimited quantities, we insist that the grant in this case must be confirmed to the extent of the limits designated by the judge who was authorized to designate them as the limits of the tract called Torreon.

Why should Bartolome Baca have transmitted the original grant to the Comandante General? There is nothing directing it to be done. There was no regulation providing for such procedure. The Governor's grant was final in itself. The judge's possession was complete and conclusive. The only question was whether the expediente was in proper form and according to the usual and ordinary practice and custom so as to be approved. There was no provision in the grant that Bartolome Baca should inhabit the property, nor was there any provision that he should construct reservoirs. The only provision was that he should, by his intelligence, increase the limited waters which have been donated to him in order that his herds may be maintained. It is true he suggested that, if possible, he would open lands for cultivation, and suggested that he proposed to improve the waters, if possible, with reservoirs and other appliances which could secure every possible advantage. It has been shown that he constructed ditches; that he had ample water for his stock to the extent of 75,000 sheep, 300 horses and 900 head of cattle; that he had about thirty servants on the property, together with his two sons; that he broke up and cultivated fields and lands and planted gardens. He certainly did everything that the spirit of his contract required him to do. The fact that he remained there so long, even until his death, and no question whatever was raised; that his heirs continued there after his death, and no question was raised until this suit, is sufficient to justify any court under the sun in holding that there were no conditions in that grant which were not performed.

As stated by counsel in quoting from U. S. vs Kingsley, 12 Pet., 476, as to what the court will do. It says: It will, as it has done, liberally construe the performance of conditions precedent or subsequent in such grants, and will not apply the rules of com-

mon law. But it says that it will not say that a condition wholly unperformed, without sufficient cause to prevent it, does not defeat all rights of property in land. But there is no pretense in our case that the condition was wholly unperformed, as in the Florida case. The contention is that the condition was wholly performed, as is apparent from the testimony in this case, and by a liberal construction there can be no question about the performance. The case cited from Florida certainly does not strengthen the government's case.

It must be remembered, too, that in considering the grant made, that it was made in very troublous times, during the pendency of the Mexican revolution, when it would not be presumed that a grant made by the Governor in a remote province, would, in any sense of the word, be referred to the Comandante General, who was a military officer in charge of the armies of the government at that time fighting to suppress the revolution. There is not an instance where, during the continuance of that revolution, the Comandante General ever undertook to exercise any authority in reference to a grant. He was in the field, probably remote from the capital of New Mexico, as the seat of war in Mexico was at least a thousand miles from Santa Fe, and travel at that time dangerous on account of the boldness of the savages, which had been encouraged by the existence of war in Mexico, as also danger from the revolutionists, who opposed the acts of a Spanish Governor. There is no reason to suppose that the grant would have been referred under such circumstances.

It has been claimed that Baca's title had not been recognized by the Governor, and the Manzano grant, made in 1829, has been cited in one instance. But the proofs show that the Manzano grant lies entirely without the limits of the grant in question. The curved line the U. S. Attorney referred to in his argument is a line made by the judge who delivered possession,

and follows exactly the position he gave on the south from the Ojo del Cuervo to the Ojo del Chico, so that that grant cannot be considered in any way; but if it could, the proofs show conclusively that Baca ceded all of his rights in that grant to the people of Manzano.

The only other grant which it is claimed was made in this property during the lifetime of Baca, is one that never had any legal or equitable existence. It is a grant applied for by Nerio Montoya to the Ayuntamiento, or town council of Tome. That council referred it to the Territorial Deputation, which undertook to make the grant without consulting the Governor.

The Supreme Court of the United States in Vigil vs. U. S., 6 Wal., p. and in other cases, has distinctly held that the Territorial Deputation had no authority to make grants. It might be, that, Baca having invited the people who settled at Torreon to make that settlement so that it would help protect him against the Indians, as the evidence shows, they thought that they could obtain some kind of confirmation of the title which Baca offered them, and for that reason they applied to the Territorial Deputation. It was well known that the Territorial Deputation had no authority to make grants, much less to invade another man's property; and these parties having entered that property, as shown conclusively, at the invitation of Baca, and he having agreed with them to their possessions, there can be no pretense that a void grant made by the Territorial Deputation, without authority, was an assumption of legal control by the proper authorities over the land in question. In the case of Hornsby vs. U. S., 10 Wal., 240, the Supreme Court of the United States held that some formal and regular proceedings were required to effect a divestiture of title, such as under the Mexican law by what is termed a "denouncement" by a party desirous to obtain the land; an investigation then followed whether or not the conditions had been complied with.

or disregarded so as to justify decree; that without such inquisition and decree the title did not revert to the Government, nor was the land subject to be re-granted. It is insisted that there is no decision that conflicts with that decision. There is no case where the Government has ever entered upon lands which had been granted, without the denunciation proceedings. But where parties had not entered upon lands granted upon conditions, and had failed to perform the conditions within the time required, or in the terms required—in fact had absolutely neglected to comply with the intent and purpose of the law, the grant, not being an absolute or perfect grant, then the Government could resume possession without forfeiture, because the land was abandoned and not subject to the proceedings of forfeiture. Land can be abandoned only before the title has vested if after the title is vested an abandonment is claimed, a reconveyance or some affirmative act must be shown. The Spanish law in that respect did not differ from ours, or the common law. The cases cited by the United States refer to just such grants as that, and the contention of the United States in this case is that our grant was such a grant. But how it can be so, it is impossible to determine. But if it were such a grant, there is no pretense that there was an abandonment. If it was abandoned, when did the abandonment take place? Certainly not in 1829 when Baca had full possession, nor in 1831 at the time Nerio Montoya was invited to come in and did come in when Baca still had full possession and gave his consent. If that had been a perfect grant made by the Governor and Departmental Assembly to Mon'oya, it would have had no validity without the consent of Baca, who had the full and complete possession.

The other grants were made long after Baca's death, and only one of them had any of the legal requisites required. That

of Sandoval, which was made after war was declared between Mexico and the United States. Without doubt there was no careful inquiry as to the fact of a prior grant. Sandoval was a rich and powerful man, and they feared the occupation by the United States. It is admitted two other grants had been previously made to him—they contained more than eleven leagues—so this one was void for that reason also.

In the U. S. vs. Peralto, 19 Howard, 680, the Court say the presumption arising from the grant makes it *prima facie* evidence of the powers of the officer asking it and throws the burden of proof on the party denying it. See cases cited in claimant's brief, pp. 9 and 10, by Catron and O'Bryan.

If the law required confirmation it required it of the Governor only, and the delivery of the title papers by the Governor with the possession is sufficient evidence of confirmation.

When a grant was revoked or disapproved by a Governor, which was rare, it required the party to deliver up possession, pull down his houses, and remove them and take away his effects and chattels. Here the opposite was done, so the presumption is with the apparent good faith of Baca.

The Act of 1754 never required confirmation of the acts of the Governors of New Mexico, which was a "remote province."

Justice White's opinion in the Santa Fe case is invoked, but the law he refers to only applies to *towns* and *villages*, not to individual grants of large tracts of land outside of a town or village.

There is no law requiring a confirmation by a superior authority, the Governor of New Mexico was his own *superior* in that regard. New Mexico was a remote province and excepted from the approval of the Audiencia or Council.

There is nothing in the position that Melgares was only acting Governor; he is so designated in the petition for the grant, but he waited nearly five months before making the

grant, and continued as Governor for two or three years thereafter, and the judge who gave possession designated him as Governor in his return and not acting Governor; but if he was acting he was *de facto* and possessed all the powers as such of a fully authorized Governor, and his acts are equally binding as a *de jure* Governor.

It is claimed the papers shows the missing part was cut off. It does not do so; examine it and it will be seen it was folded over a line made by a lead of a printing press which partially cut it, and that it broke practically clean when it was doubled at the place from which the part is missing and above the *cross break* it is equally clean of rough edge, showing if cut below it was cut where it is accounted for as being in Baca's box and when found the piece was missing. Why did Baca have it? Only as evidence of title, for sixteen years he claimed title under it and his heirs after that for twenty years more. Is not this an explanation?

The Cedula of 1805 only granted the additional power, of right to sell lands and required the sale should be approved, but did not take away the power to grant, or require them to be approved. This Court has too often held the right to grant existed in Spanish Governors to now deny that right to a bona fide purchaser—See U. S. vs. Peralton, 19 Howard, 680 and cases cited, pp. 9 and 10, Catron and O'Bryan's brief.

Assuming that the alleged grants pretended to have been made within the limits of the grant to Baci were an assertion of authority by the Government, they would not extend beyond their own boundaries and affect other parts not embraced in them—and to affect at all they must be legal; not one of them was legal as is shown in the former brief. U. S. Attorney claims the improvements were at Torreon only, but the witnesses say there were two ranches, one at Estancia Springs and the other at Torreon. The stock was kept at E.,

tancia quite distant, and there must have been improvements there.

The U. S. Attorney dwells on the fact that in the Bracito tract Alencaster refused the grant first; that on application to Melgarcs he expressed doubt if he had as much power as Alencaster. This is easily explained. That tract of land was only about thirty miles north of Paso del Norte now Juarez, Mexico. There was a doubt about whether New Mexico covered that country. The Commandant General had appointed a Lieutenant Governor there, and it was doubted who had the authority so it was referred to the Commandant for decision in the exercise of his superintendency power, and he directed the matter to be presented to the Lieutenant-Governor at Paso del Norte, but did not pretend to make the grant or claim the right to revise or control it; that grant made by the Lieutenant-Governor at El Paso without approval was recognized as valid by Congress, and confirmed to Hugh Stevenson by the Act of June 21, 1850.

That case being called to the attention of the Commandant shows he did not exercise or claim the right of approval but he had the supervisory power where there was a doubt as to who had the right or power to make the grant, to designate the proper party to make it.

J. D. O'BRYAN

T. B. CATRON

Attorneys for Petitioner.

IN THE
Supreme Court of the United States,

OCTOBER TERM, 1897.

No. 43.

ELOISA L. BERGERE, FOR HERSELF AND THE
OTHER HEIRS OF MANUEL ANTONIO OTERO
AND MIGUEL ANTONIO OTERO, *Appellant*,

vs.

THE UNITED STATES ET AL.

No. 46.

THE UNITED STATES, *Appellant*,

vs.

ELOISA L. BERGERE, FOR HERSELF AND THE
OTHER HEIRS OF MANUEL ANTONIO OTERO
AND MIGUEL ANTONIO OTERO.

PETITION FOR REHEARING.

Comes said Eloisa L. Bergere, for herself and the other heirs of Manuel Antonio Otero and Miguel Antonio Otero, appellant in case No. 43, and appellee in

case No. 46, by T. B. Catron, her attorney, and petitions this honorable court to withdraw the mandate and vacate the judgment heretofore entered herein, dismissing the petition in said cause, and to grant a rehearing in said cause; and as ground for said motion respectfully assigns the following errors of law and fact appearing in said judgment as explained by the opinion of the Court:

- (1) In the conclusion (*168 U. S. 73*) that the quotation from petitioner's brief that this "grant was not finally made until return was made by the *alcalde* and approval had" was correct as to the law, and in the statement in the opinion that the Governor in his reference of the case to the *alcalde* bids him transmit the *expediente* to his office so that if approved the "proper *testimonio*" may be ordered to be given the petitioner and that until approved the action of the *alcalde* was of *no effect* and that there was, therefore, no grant.
- (2) In the conclusion (*Opinion, 168 U. S. 73*) that the papers themselves show no approval by the Governor and that there is no evidence of other facts or circumstances from which such approval could properly be presumed.
- (3) In the conclusion (*Opinion, 168 U. S. 74*) that the *alcalde* on his own account proceeded to deliver a much larger tract of land than Baca had petitioned for.
- (4) In the conclusion that the "proper *testimonio*" to be given was "something other than the *expediente*." (*Opinion, 168 U. S. 76*.)
- (5) In the conclusion (*Opinion, 168 U. S. 76*) that the order of the Governor to the *alcalde* to give the possession of the land and designate the limits, was an authority to designate only the limits described in the petition.

(6) In the conclusion that there were not sufficient acts of possession to aid the presumption of approval by the Governor or to invoke thereby the presumption arising from length of time. (*Opinion, 168 U. S. 77, 78 and 79.*)

(7) In the conclusion that there was no evidence of such exclusive possession by Baca founded on a claim of right to the land.

(8) In overlooking the fact that the grant was a grant for pasturage and not for cultivation and residence, and that the possession required to occupy and hold it in exclusive right was such possession as might be had by pasturing and grazing live stock, thereon, the land being shown to be useful as grazing land only and granted for that purpose, with the incident thereto that if possible it might be partly cultivated.

(9) In the conclusion that the failure of Baca to include the grant in the inventory of his property in his will is a circumstance showing want of approval, or that Baca did not think he owned the property. (*Opinion, 168 U. S. 80, 81 et seq.*)

(10) In the conclusion (*168 U. S. 85*) that "no grant perfect or imperfect was in existence at this time * * * and that there is not sufficient evidence that at the time of the cession of New Mexico to the United States the predecessors or grantors of petitioner had any title of any kind whatever, perfect or imperfect, and that there should be no confirmation of any alleged imperfect title or grant."

(11) In the conclusion that the burden was on claimant to show positive approval,—this after fifty years delay in giving her an opportunity to do so and all the witnesses had died who could have known that Bartolome Baca got the *expediente*.

(12) In the conclusion that the acknowledgment of Baca's ownership was not shown to be by others than Baca's heirs and employes.

(13) In the conclusion (*Opinion, 168 U. S., p. 75*) that from the mere fact of the possession of the papers there is no sufficient ground on which to base a presumption of delivery; while all the facts taken together, acknowledged by everyone, the possession given, and held for over twenty years, with 75,000 sheep and large numbers of horses, beef cattle and hogs, and the possession of the estate by Baca's sons and employes, create strong corroboration and presumption.

(14) In the conclusion (*168 U. S. 75*) that some evidence other than possession should have been given, it appearing that seventy years had elapsed since the papers were given, that all the witnesses to the delivery are dead, that this government waited fifty years to pass this law and give claimant an opportunity to put in evidence.

(15) In the conclusion (*Opinion, 168 U. S. 78*) that it is not slated in the evidence who were the persons who recognized Baca's ownership, whether servants or agents of Baca or others.

(16) In the conclusion (*168 U. S. 78*) that the Mexican government during the time when Baca was in possession regarded the tract as vacant and unoccupied, so far as to permit of its conveyance to other parties.

(17) In not holding at least that the grant was an imperfect one which the claimants would have had the right to make perfect under the Mexican government, and consequently are entitled to confirmation as such for eleven leagues as held by the lower court.

ARGUMENT.

It is submitted with deference that material error has been committed in this cause by reason of the conclusion of the court that there was no grant until the approval of the *alcalde's* acts by the Governor. Petitioner did not intend in the brief to admit that a failure of the Governor to approve the acts of the *alcalde* left Bartolome Baca without any right or grant to the land, but that in the absence of such approval the grant, though not final, was simply inchoate, and the right of the grantee to the whole of the land given in possession by the *alcalde* was not definitely fixed. The act of approval was necessary perfectly to complete the title of Baca to the land, to the full extent of the boundaries designated by the *alcalde*, the boundaries mentioned by him being natural objects different in part from those specifically stated in the petition for the grant as points to which the land asked for extended. So that the petitioner did not in her brief admit nor does she admit that there was no grant without such approval.

The petition asks for the tract "called *Torreón*" and then states that it extends to certain points mentioned, but does not say it was bounded by those points or stopped at them. It was a particular tract, "*Torreón*," which was described as extending at least as far as those objects mentioned, and the petitioner prayed the Governor "to grant the same, in real possession * * * in order to establish thereon a permanent ranch or hacienda which he engages to occupy with his stock," etc.

The Governor in the first paragraph of his decree granted it "as he asked according to law understanding no injury would result to any one, but there would be an *increase of stock raising*.

The court will see by this decree that the Governor granted what was asked, and his grant was absolute and there were no conditions to it. The only condition which can be inferred was as to whether the *alcalde* in his act of possession might conform to the grant: if so, the *expediente* was to be returned by him to be approved and a formal *testimonio* given thereon, or if not then the same was to be left for future action or correction.

There was no law, decree or custom making a *formal delivery* of a Spanish grant *essential* to the grant, nor was there any such law or custom making a delivery of a *testimonio* or *expediente* or other evidence of title necessary, before the title should vest. A grant when made operated *ex instanti*, like a legislative grant of the United States Congress, provided the property could be identified. Could this be identified? It was a particular tract called "*Torreón*;" that identified it. Also it gave certain natural objects to which the tract extended, at least, and as far as it lay within those boundaries it was also identified. The only object of juridical possession was to identify the boundaries, if perchance they passed beyond or only stopped at the natural objects given. The tract "*Torreón*" was granted,—did it stop at or pass beyond the natural objects? If the natural objects mentioned were the actual boundaries of the tract and it did not pass beyond them, there could be no object in giving juridical possession. By the description given, the land would be known and segregated from the public domain, so that the

grant was perfect of the tract at least up to the natural objects specified and if it passed them or the *alcalde* should decree other boundaries or "limits" necessary to be "*designated*" he would ascertain and fix them and report for confirmation, so that a proper *testimonio*, meaning a document of title showing the changed limits might be signed. This is all that could be concluded from the granting decree itself.

There is error in the conclusion that the grant papers themselves show no approval by the Governor and that there is no evidence of other facts or circumstances from which such approval could properly be presumed. The grant papers and other facts and circumstances must be taken and considered all together and not separately as seems to have been done. The grant papers are admitted to be genuine. They show the petition, the grant, the act of possession, and the return thereof to the Governor is shown by the indorsement of Gov. Melgares at the bottom of the act of possession. They were in possession of Baca, were found with his papers in possession of his heirs by the executor of one of his heirs, and in a box which had belonged to Baca himself. Baca had taken possession of the land in 1819, and occupied it until his death in 1834, fifteen years, and his widow and children continued to occupy it for many years after him, claiming it as their own, from 1819. It was recognized by every one as his and theirs.

See evidence of Clemente Chaves, pp. 79, 80, 81.

This evidence was apparently overlooked by the Hon. Justice who prepared the opinion. The *alcalde* certainly returned the grant papers to the Governor and he considered them and they are afterwards found with Baca. Why? Who should explain this

after seventy years? Who can? Is not the burden on the party at fault? The treaty required all property of Mexicans to be protected. It was the duty of this Government to take proper steps to do so, promptly, as it did in California. This it neglected to do in New Mexico for forty-five years, until all the persons having knowledge of these facts had passed away. This grant is now seventy years old, and the time from its date to the establishment of the land court was sixty-two years. Witnesses who might have been present when Bartolome Baca received the grant papers from the Governor with his indorsement would then have to be about eighty-five years of age. It is not supposed that many people would have been present or would have taken note of the fact. The Governor delivered the title papers, which were a "proper *testimonio*" or evidence of title, a document which testified to what had been done. Baca kept possession and was acknowledged and respected by every one as the owner, and used the grant for the purposes for which it was given, complied with the conditions so far as he was required, if there were any, and showed good faith in claiming ownership and retaining possession. Why should the grand-children and great-grand-children be now required to furnish proof of how Baca came by the title paper, further than possession presumes?

The court erred (*Opinion, 168 U. S. 74*) in finding that the *alcalde* on his own account proceeded to deliver a much larger tract of land than Baca petitioned for. What did Baca petition for? "A tract called 'Torreon' and which extends on the north to the *Monte de Cibolo*; on the south to the *Ojo del Cuervo*, on the east to the *Estancia* Springs, and on the west to the *Obo*

mountains." The tract "called *Torreón*" was asked for. If it did not extend to the natural objects mentioned, no more than the *tract* was asked for or granted; if it stopped at them, then no more was granted; if it passed them and they remained inside, then the *tract* was not limited by them, but would go beyond them. The language of the petition calls for a tract by *name*. That was one common way of making grants, i. e. of a tract by its name, and then the whole tract was carried.

Hornsby vs. U. S., 10 Wall., 232.

Higueras vs. U. S., 5 Wall., 828.

Alviso vs. U. S., 8 Id., 339.

Suppose, as we claim, there was a difference between the exterior limits of the tract called *Torreón* and the natural objects mentioned. How was it to be determined what was the extent of the grant or tract called *Torreón*? This court has answered this, in the decisions:

Graham vs. U. S., 4 Wall., 259.

U. S. vs. Pico, 5 Wall., 534.

Van Reynegan vs. Bolton, 95 U. S., 33-37.

In *U. S. vs. Pico, 5 Wall., 534*, this court by Justice Field, speaking of the office of juridical possession by an *alcalde*, said:

"This proceeding involved an ascertainment and settlement of the boundaries of the land granted by the appropriate officers of the government, especially designated for that purpose and has all the force and efficacy of a *judicial determination*. It bound the former government and is equally binding on the officers of ours."

When Otero purchased this grant, he did so in view of these decisions, as being a rule of property on which he could safely make purchase.

In *Van Reynegan vs. Bolton, 95 U. S., 33*, the court

says: "Ordinarily the boundaries thus established would be accepted as conclusive by our government."

No witness has pretended to say that the tract "called *Torreón*" did not extend to the natural objects at which the *alcalde* fixed the boundaries in the juridical possession. The *alcalde* was the judge of the vicinage, necessarily acquainted with the country, the tracts of land, and the natural objects bounding them.

He went on the ground with witnesses and determined the "limits" as he was directed. Who can say he exceeded the "limits" of the tract of *Torreón*? This court says in the cases above cited that his acts are binding on the former governments and ours also. Can there be a doubt, in the absence of other evidence, that the *alcalde* properly described the "tract of *Torreón*?" If so, from what does it arise? The amount of land in the tract as given by the *alcalde* will not exceed 350,000 acres.

The court erred in concluding that "proper *testimonio*" to be given was something other than the "*expediente*." The word "*testimonio*" has a technical meaning, which designates it as a document certified by a notary public, but it has an ordinary meaning which is the same as the word "*testimony*" in English and fully as broad, meaning evidence of a thing, etc. In which sense was it used? If it had been used in the technical sense it would have been by itself and not qualified, and the Governor would have said the "*testimonio*" and not the "proper *testimonio*." Why should he have used the word "proper?" Because any evidence of title was "proper" and the word "proper" is used to show that some paper or document which could serve as evidence of title would be

given. The *expediente* was such document. In fact, under the practice of the Mexican law which was compiled from the Spanish practice, the *alcalde* generally gave the party one copy of the act of possession, and retained the other.

The court erréd in the conclusion that the order of the Governor to the *alcalde* to give the possession of the land and designate the limits was an authority to designate only the limits described in the petition. The order of the Governor to the *alcalde* at the foot of the granting decree was no part of the grant that precedes it, and it is complete and the land was granted as the petitioner "asks it, according to law." The order or direction to the *alcalde* was to give the possession, designating the limits and doing what is proper, which was the order for him to find the limits or boundaries if possible of the tract "called *Torreón*," whatever they might be, and designate the limits, as the petitioner Baca had not stated the tract was limited by the natural objects he mentioned, but only that it extended to them. It will be noticed that Baca's petition for the land does not say the natural objects are the boundaries of the tract, but only that the tract extended to them. It might have extended farther, if so, the *alcalde* must show the place which it extended to, on the east. Only the limits of the tract could be designated if it differed from the natural objects mentioned; still the "limits" of the tract were to be designated by the *alcalde*. Why the necessity of having an act of juridical possession, "known only to Mexican law," if the grant was limited certainly by the natural objects mentioned? They fixed in that case the precise limits. It was because it was of a specific tract, "*Torreón*" and as to it what

were its boundaries may not have been fully known by all, so they might respect it. The specific fixing of the boundaries was for the benefit of the people. The government could ascertain for itself the boundaries of the tract whenever necessary. A construction of the grant which would render the act of possession a piece of supererogation or unnecessary will not be indulged.

There must have been an idea that possibly the "limits" of the tract were not identical with the objects named;—then the limits of the *tract* which was granted should be designated. There might have been a question as to what were the limits of the tract and thus require them to be ascertained and designated. But if there was no possibility of doubt but that the natural objects designated defined the lands of the grant, the order to the *alcalde* would not have indulged in the nonsense of designating the same objects already described in the possession and grant, but would have stopped short after directing the *alcalde* to give the possession, or at most it would have said, give the possession within the limits of the natural objects designated as boundaries. This would have been the reasonable and sensible way and probable way, if those objects were the exclusive limits of the grant.

The court erred in holding that there were not sufficient acts of possession to aid the presumption of approval by the Governor, or to invoke the presumption arising from length of time. What are the acts of possession proven?

First. The delivery of possession by the *alcalde*, a judicial officer of the vicinage, and its receipt by Bacá under the grant.

Second. The sons of Baca lived at *Torreón* within the limits of the grant, attended to the father's interests; they had a *corral*, a *torreon* (with tower) and houses, and lived there with their servants. They had the flocks of their father, the grantee, Baca; they had herds of horses at *Estancia*, and had irrigating ditches at *Torreón* (*transcript*, p. 39) and planted small fields and gardens. Baca's servants and sons lived at *Torreón*, which was on the grant, and the witness saw four or five houses of the workmen there. They had horned cattle also at *Estancia* (*transcript*, p. 40). The place (*Estancia*) was full of horses and cattle, the overseeing was carried on for Baca; they had fifteen lots of sheep, and there must have been at least 5,000 sheep in each lot (*transcript*, p. 41). The witness, Padilla y Montoya, drove his father's animals near *Estancia* and Bernardo Chaves, the overseer, drove him off and wished to horsewhip him because his father had no right to water his stock there, it being the property of Bartolome Baca. He said the property of Bartolome Baca extended from the *Cerro* to the *Chico* and from the *Chico* to *Pederal*, and from the *Pederal* to the *Cibolo* and from there to the summit of the mountains. It was notorious among the people that those were the boundaries. (*Transcript*, p. 41.) The sons of Baca, who lived at *Torreón*, said the grant was the property of their father. (*Transcript*, p. 41.) Baca had about thirty servants on the property (p. 42, *transcript*), and all the horses, cows and sheep on the property belonged to him. (*Transcript*, p. 42.) The witness, Clemente Chaves, did not know of other than Baca and his heirs being on the grant and living there, and said that the town of *Torreón* was settled by persons by the invitation and permission of Baca. (*Trans-*

script, p. 78.) The same witness also said that Baca claimed the property as his own under a grant made to him in 1819, by Melgares, Governor (*transcript, p. 79*); and that all the heirs of Baca, after his death, claimed to be the owners of the property (*transcript, p. 79*); that during the lifetime of Baca, after 1819, the property was recognized and respected by *all persons* as the property of Baca, and by the people generally, and by those living thereon and in the vicinity. (*Transcript, p. 79.*) That Baca had ranches at *Torreón* and also *Estancia* springs, on the grant, in his lifetime (*transcript, p. 79*); that the persons who lived on the grant and erected the town of *Torreón* informed him they were there by the direct consent and permission of Baca. The testimony is full of evidence of possession by Baca and by his sons, employes, laborers and with large bodies of live stock, consisting of horses, horned cattle, sheep and hogs; that Baca had several houses there, occupied by employes, and his sons had houses and resided thereon, and his children after his death; that after his death, the wife of Baca had the live stock counted and turned over to her on the property, and she placed another "boss" or overseer in charge of them and it.

It is the rule that such possession as the property is adapted to naturally is all the possession required to start the statute of limitations.

The use of the land for the purposes for which it was granted or given and the manner anticipated certainly must be held to be possession and the very possession required. Its use for other purposes might well be ground of complaint and give an opportunity to denounce the same for non-compliance with the uses and purposes for which the grant was made.

It was not required that Baca should absolutely exclude everybody from the possession of the entire tract of land, it being granted to be used for grazing. It is well known that grazing lands are more or less trespassed upon, by everyone. It is said by the court in the opinion that the Indians probably grazed their live stock on the lands. In that vicinity there were none but savage Indians and Baca kept large bodies of men on the property in order to protect his own stock from those Indians and even then he was unable to do it at all times. There can be no pretence well-founded that the Indians ever occupied any portion of the lands or grazed stock there or that there was, in fact, any settlement of civilized Indians within one hundred miles of the property.

The court in its opinion seems to have overlooked the fact that this grant was made expressly for the purpose of pasturing live stock, with simply the possibility that small parts and portions of it, limited by the scarcity of water and the necessity of its use by the stock, might be placed under cultivation. The proofs show that some small parts at or near *Torreón* were placed under cultivation by Baca; that one strip of land about 300 by 400 yards, was cultivated by him. Such a tract as that cultivated in the western country, away from plentiful running streams, is a very large amount, more than could well have been expected or anticipated. The authorities lay down the rule that the statute of limitations may be set in motion whenever the property is occupied by an adverse holder in the manner and by the means for which that property is peculiarly adapted. If property be agricultural land, then its occupation for cultivation would answer the requirement; if grazing land, in New

Mexico under the laws of Spain and Old Mexico, which laws never required fencing but rather required the herding of live stock, that possession would be sufficient; if mountainous country, adapted only to timber cutting, its occupation and use for that purpose would be such occupation as would start the statute.

It being grazing land, in the present instance, as is shown by the evidence, the occupation with live stock, grazing over it in all directions, would start the statute of limitations. The attention of the court is again called to the fact that Baca had on this ranch 75,000 head of sheep, large numbers of horses, horned cattle and a thousand hogs. The water on the property was exceedingly limited. It was necessary that the stock should graze at long distances, sometimes passing off the property to outside waters. Stock could not be maintained in such large bodies around one point or spring of water. We insist that the occupation for grazing purposes, as proven in this case, is exactly that occupation which was required and expected, and amply sufficient to start the statute of limitations.

The court has referred to the fact that the alleged will of Baca, which was admitted in evidence subject to objections, does not contain any mention of this property. It will be remembered that Baca had his sons living on this property prior to and at the time of his death. He may have, therefore, given the property to them or to his widow, who took possession after his death; but this it is impossible now to prove. The United States government has waited too long—so long that the witnesses who might have known the facts or might have known of the existence of papers,

and all old archives and records, have disappeared and passed away. The government should not hold Baca's grandchildren and great-grandchildren to as strict character of proof as they must have presented had this grant been investigated in 1851, at the time of the adoption of the California statute, while Baca's children were most of them living, and all the officials of the former government were still in existence. Besides, the alleged will, which has been introduced, is not a proper evidence. It is only an alleged certified copy, not pretending to be certified to by anybody who had authority to certify it, not pretending to come from any proper office, nor does the paper appear to come from the hands of the person entitled to its custody. It has never been proven, no record of it is shown to have been made in any place, the original is not accounted for. And even if the copy were admissible, the mere fact that a party omits from his will the mention of a certain piece of property, is no evidence that he does not possess or claim it. If some other individual had made claim to the property, then that circumstance might assist in some way to corroborate proof that Baca did not claim the land at that time, but in this case it is of no consequence. There has never been any denunciation of the grant, and that is the only way known to law by which Baca's title could have been divested, he having had a grant made to him of the lands. Denunciation was the only remedy or procedure by which the title once bestowed could be taken away from him—unless he had abandoned the property for a long time so that a presumption might arise against him in that way. However, in this case it is shown that Baca actually claim-

ed, held and occupied the property for the purposes for which he asked it, in the manner in which he stipulated to occupy it, until the day of his death, and that his widow and children thereafter continued to occupy it for years, and their descendants and assigns down to the present time.

The court erred in holding that no grant, perfect or imperfect, was in existance at the time New Mexico was acquired by the United States, and that there is no evidence that the predecessors of grantors of petitioner had any title, perfect or imperfect, that should be confirmed. This court has frequently and without variance, except in this case held that where a grant had been made and had not been abandoned, the title was passed, although there were some condition-subsequent to be performed; that wherever a party in good faith had shown a compliance with the purposes and terms of the grant and no abandonment appeared, such facts were binding upon the former government, entitling the party to perfect his grant. This was exactly the situation in the case of *Fremont vs. U. S.*, 17 How. 542: there the grant was made to Alvarado, Fremont's grantor, two years and a half before the country was occupied by the American troops. Hostilities with Indians existed at the time. It was directed that Alvarado should be placed in possession and he was required to make certain improvements within a given time. Alvarado never was placed in possession, no improvements whatever were made; in fact there never was any occupation of the grant; but this court held that two years and a half was not an unreasonable time in order to secure the delivery of juridical possession and to perform the conditions imposed, that the grant itself had given

title to Alvarado and through him to Fremont, and that title could only be divested by denunciation, which was a judicial proceeding under the Mexican and Spanish law wherein some party complained that the grantee had failed to comply with the conditions of the grant. The matter was then judicially investigated, and if found to be true, a decree was entered, declaring the grant forfeited, and giving it to the party who denounced it. Special attention is called to the Fremont case, because it decides this identical point that the grant, being imperfect, the conditions not being complied with, in any respect, and such time not having elapsed as to be construed as an abandonment of the property, Fremont's title, given by the Governor, still continued in force, and could not be taken away from him except by denunciation. In the case at bar the grant was made by the Spanish Governor in July, 1819, during the existence of the war in Mexico for her independence, when the country was very much unsettled, when officials were occupied with much more serious business, and when little attention was given to civil or private affairs. The independence of that country was achieved in less than two years from that date; a new system of government was installed, and new officers were placed in control. The old laws were practically vacated and all rights of property were guaranteed under the new system; especially was this the case under the "plan of Iguala." Had not Baca the right under the Spanish and Mexican governments to insist upon his grant being property given to him in possession? If the possession which was actually given by the *alcalde* was not a correct possession, as this court has said, on account of the al-

leged excess in the amount of lands given, did not Baca have the right to have the Governor decide whether that grant should be held by him, or disapproved and have another and more particular juridical possession given? Had he not the right also to hold the land called the "*Torreón*," or if the natural objects mentioned were the limits of that tract, had he not the right under the grant to hold to the extent of those limits. Or if that tract did not extend to those limits, had he not the right at least to hold to the extent of those natural objects, within the larger tract? The authorities are without number that he had such right. Precedent is all one way that he had.

The court's attention is called to the various authorities on this point and particularly the case of *Freemont vs. U. S.*, 17 How. 542; and other cases in the same line.

The court erred in the conclusion that the burden was on the claimants to show positive approval by the Governor of the grant. How could this be done, after seventy years had passed and after fifty years had elapsed in which the United States government itself had failed to give claimants an opportunity to do so? Had the act to adjudicate these titles been passed in 1851, when the California act was passed, instead of 1887, the witnesses would then have existed by whom all such facts could have been shown; but time has eliminated them and now it does not lie with the government to say, after it has been guilty of the grossest laches in carrying out the terms of the treaty with Mexico in which all property of Mexican citizens was guaranteed, that the burden of showing a positive approval by the Governor was to be thrown on the claimants. The term "property" in the treaty coin-

prehends every species of title, legal or equitable, inchoate or complete.

Bryan vs. Kennett, 113 U. S., 179.

Soulard vs. U. S., 4 Pet., 511.

Slidell vs. Grandjean, 111 U. S., 412.

Any facts from which such approval might possibly be assumed would be sufficient. The possessing of the grant document, with the indorsement upon it, that being a muniment of title which might be considered to be a "proper *testimonio*" or evidence of such title, the fact that Baca was allowed by the government itself to remain in open, continuous and notorious possession until the day of his death, in 1834, fifteen years; that fact that his ownership was recognized by everyone in the vicinity; that he and his heirs openly and notoriously claimed the property, ought all to be sufficient at this late day, to authorize the assumption that there was a government approval. It will not do to say that the government of Mexico did not recognize Baca's title. There is nothing in the papers, nothing in the evidence, nothing in the record to bear out such assertion. The bare fact that a grant was given to Nerio Montoya, not by proper authorities, certainly cannot be held to be a decision by government officials that Baca had no right to this property. On the contrary, if the grant to Nerio Montoya be inspected, it will be seen that it cannot be ascertained in any manner that it conflicts with this grant. The evidence is overpowering that the occupation of the particular locality or settlement called "*Torreón*," by Nerio Montoya and others, was at the special instance and request of Baca himself, who desired to have them there in order to assist him in protection against the

Indians. There was no prohibition in the grant against Baca's inviting other people to come on his property and live there, and aid him in protecting against Indians. On the contrary, he stipulated that he would arm people and protect the property, which the evidence shows he did do, and this is one of the ways in which he did it. When Baca invited people to come on his property, it is rather an argument that he was the owner than that he did not claim it. When they came there by his consent, who can say that their occupation was hostile? The alleged grants of *Tajique* and *Chilili* were also made by officials who had no authority to make grants. If they had no right to make grants, and were not judicial officers, acting under a proceeding of denouncement, they had no right to decide that Baca was not the owner. They had no right to take steps which would in any manner prejudice his ownership. The settlement at *Tajique* and *Chilili* having been made, it is fair to presume, as the Indians were hostile, that Baca was glad to have those settlements come there and by their presence aid him in protecting his property against the savages. It is fair to presume that he looked, was aware of their presence there and that they had no actual title or right, and therefore made no complaint. He does not appear in giving or attempting to give possession in these places—and no possession was given at Chilili whatever, that Baca was ever cited or notified to appear and show cause, in regard to these alleged possessions. An illegal title certainly cannot be invoked to defeat Baca's title which was lawful, nor can an action of a government officer who had no control over the subject matter be invoked as a recognition or direction of the government that

Baca had no rights. This would be carrying matters to an extraordinary limit. Suppose that a title was issued from the Land Office at Washington to a given piece of land, and that the Secretary of State undertook to give the same piece of land to some one else; he has no authority over it, and his action is simply a nullity. The same is true with reference to the authorities who gave these possessions on this property.

It clearly appears from the evidence of Clemente Chaves that the persons who recognized the title of Baca were everybody in the vicinity, living on or off the property, including Baca's heirs and servants, and strangers. No argument is needed to refute the contention in the opinion of the court on that subject. The Mexican government never permitted the conveyance of the property to any other parties, as the court has stated. In arriving at such a conclusion the court is in error; no legal conveyance having been made, no conveyance at all was made.

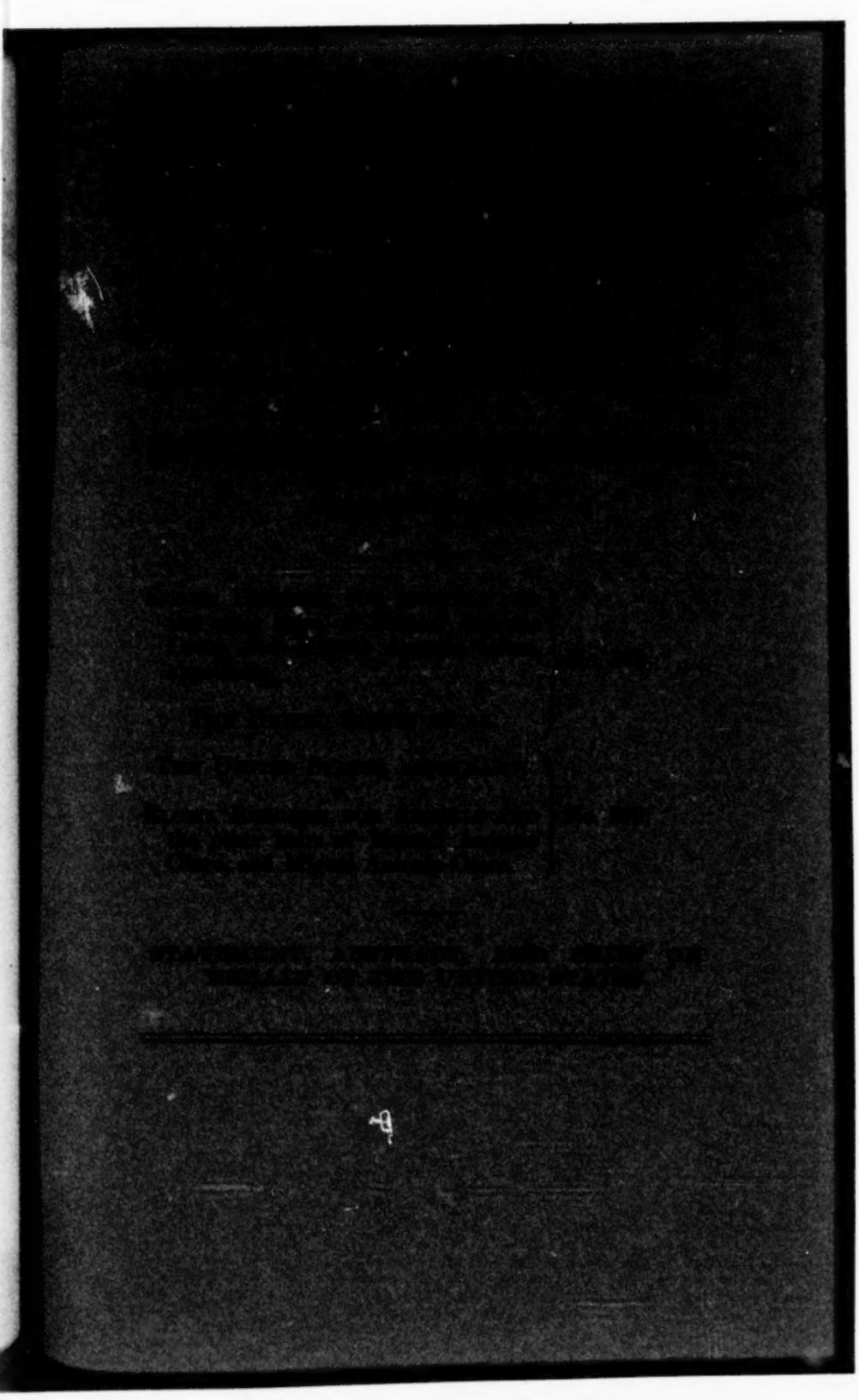
Finally we insist that if the court does not find that there was a complete and perfect grant made to the tract of land called "*Torreón*," embraced within the boundaries mentioned in Baca's petition for the grant, still the court must find that there was a grant made, which has not been completed or perfected by way of giving a correct and exact possession, but that the grant was one which was occupied, entered upon, held, claimed and used for the period of more than twenty years, and one which, if the Spanish government had continued in force in the Territory of New Mexico, Baca would have had a right to have made perfect. If he had the right to have that grant made perfect by having the proper

possession given to him for the holdings which he had, being of the exact nature, kind and character stipulated for in his petition, this court to say the least should approve the grant as an imperfect grant for the amount of eleven leagues, affirming the judgment and decision of the court below. All of which is respectfully submitted.

THOMAS B. CATRON,
Attorney for Eloisa L. Bergere.

I do hereby certify that the foregoing petition for rehearing is made in good faith and not for purposes of delay merely.

THOMAS B. CATRON.



In the Supreme Court of the United States.

OCTOBER TERM, 1896.

ELOISA BERGERE, FOR HERSELF AND
the other heirs of Manuel Antonio
Otero, and Miguel Antonio Otero,
appellants, } No. 279.
v.
THE UNITED STATES ET AL.

THE UNITED STATES, APPELLANT, }
v.
ELOISA BERGERE, FOR HERSELF AND
the other heirs of Manuel Antonio
Otero, and Miguel Antonio Otero. } No. 299.

STATEMENT, ABSTRACT, AND BRIEF ON BEHALF OF THE UNITED STATES.

The petitioners, claiming as the legal representatives of one Bartolomé Baea, filed in the Court of Private Land Claims, on January 9, 1893, their petition for the confirmation of what is commonly known as the Bartolomé Baea grant, the area of which is not stated, but which has been estimated to contain all the way from a half a million to a million and a half acres.

In the petition it was alleged that on February 4, 1819, Bartolomé Baía petitioned the governor of New Mexico for a grant of land commonly called the "Torreon tract." In his application and as a consideration therefor he promised not to abandon it, and, if possible, to open lands for cultivation, whether they be irrigable or temporal; also to improve the irrigation of the same by the construction of reservoirs.

On July 2, 1819, the acting governor, Melgares, made an indorsement on the petition in the following terms:

As he prays for according to law, with the understanding that no injury results to a third party, but rather stock raising and cultivation will be enhanced under the conditions asked, Mr. José Gareia de la Mora will proceed to give the possession, designating limits and officiating duly, which being concluded, he will transmit the *expediente* to this superior office, so that if it be approved the corresponding *testimonio* may be ordered to be given to the petitioner. — Melgares.

On September 12, 1819, it is alleged that José de la Mora, as directed by the governor, placed Bartolomé Baía in the possession of the land for which he had petitioned and which had been conceded to him by the foregoing order, defined the boundaries thereof, and in which act of possession Mora obligated Baía to perform the conditions imposed, and recited in conclusion—

Therefore I transmit this to the superior authority so that, being seen by you, it may determine as it shall seem just.

And it is also alleged that afterwards and during said year 1819 the aforementioned proceedings were by said

Justice Mora transmitted to the said Melgares, governor of said province, and by him approved, and upon such approval the corresponding *testimonio* of the grant was then and there delivered to said Baca, and he entered into the full and lawful possession of the tract of land so granted to him.

It is further alleged in the petition that in 1829, 1834, 1841, and 1845 the authorities of New Mexico, *with the consent of said Baca, made grants to other parties of portions of said land theretofore granted to him in 1819* (which allegation the evidence shows to be untrue as to the fact of these grants being made with the permission of Baca, no such permission appearing in any way).

It was further alleged that said Baca and those claiming under him had been in the continuous possession of said property since the making of said grant (which the testimony shows to be untrue).

The claims under several of these grants amounted to considerable land, and particularly the grant to Antonio Sandoval, made on December 7, 1845, it covering more than a hundred thousand acres of the grant to Baca, and it was not shown that either Baca or those claiming under him consented thereto, but, on the contrary, it was shown by the reports of the *ayuntamiento* of Tomé, the official body to which the applications were referred, that in all grants covering portions of this property it reported that the same was vacant, unoccupied, and unclaimed, and the granting of portions of the same did not conflict with the rights of any third party.

The owners of the Sandoval grant, made in 1845, were made codefendants with the Government, and filed an

answer specifically denying the allegations of the petition and alleging ignorance of many of its allegations, alleging possession in Sandoval and themselves since 1845, and also denying Melgares's authority to make the Baena grant.

On June 23, 1893, an answer was filed on behalf of the United States, in which the allegations of the petition were traversed, specifically denying the power or authority of anyone under the orders of Acting Governor Melgares to deliver to Baena juridical possession of the property, and that if Baena had possession of the same under said alleged grant he had abandoned it, and that the same remained vacant and unoccupied for many years prior to the acquisition of the territory by the United States, and that when the United States acquired sovereignty over it it was vacant, uninhabited, uncultivated, and abandoned, and passed to the United States as public domain. Also, that at the time of acquiring the political dominion over as well as title to property in this territory by virtue of the treaty of Guadalupe Hidalgo, the United States was not advised by the records or archives that anyone had any right in or claim to said property by virtue of any grant made by Melgares to Bartolomé Baena in 1819.

It was further averred on behalf of the United States that if Melgares attempted to grant said land to Baena the same was without warrant or authority of law and void, and alleged ignorance as to whether or not at said time, 1819, Melgares was the governor of said province and clothed with the authority to dispose of the public domain of Mexico.

It denied that the conditions imposed by law, as well as the terms of the grant, were complied with, and there-

fore the court was without jurisdiction to confirm said grant in the absence of such proof.

It also alleged that there was being asserted in the Court of Private Land Claims, in the name of J. Francisco Chaves, a claim for what is known as the Nerio Antonio Montoya, or Ojo de en Medio, grant, which was wholly included within the boundaries of the Baca grant sued for, which said Montoya grant was made by the officials on November 12, 1831.

Concluding the answer on behalf of the Government, it was alleged that the claim was not such a one which, under the law of nations, treaty of session, or the act of Congress of 1891, the court should respect or recognize.

From the original title papers, which were never deposited in the archives, but were produced from private hands, it appears that on February 4, 1819, at San Fernando, Bartolomé Baca directed a petition to the acting governor, stating that he was captain of the volunteer militia company of cavalry of the villa of Albuquerque, and resided in the jurisdiction of Tomé; that he had a number of sheep, horned cattle, and horses, without legitimate property on which to keep them together under shepherds, cattle herders, and horse herders to take care of them and secure their safety; that there was vacant on the other side of the Abó Mountain a tract called the *Torron*, which extended on the north to the Monte del Cibolo, on the south to the Ojo del Cuervo, on the east to the springs called the Estancia Springs, and on the west to the said Abó Mountain; and he asked a grant of the same in royal possession in the exercise of the powers conferred by His Majesty, in order that he

might establish thereon a permanent ranch or *hacienda*, which he engaged to occupy with his stock, sustaining the same with armed servants, who would defend it against the incursions of the enemy, and that he would not abandon it; that he would also, if possible, open lands for occupation, whether irrigable or dependent upon the seasons, for the advancement of agriculture, and although the water sources it contained were small and uncertain he promised to improve them with reservoirs and other appliances which would secure every advantage possible. He affirmed that at that time there was no owner for the land and that there had never been any owner for the same, and requested that he be placed in possession with the proper documents and formalities. (R., 8-9.)

On July 2, 1819, at Santa Fé, Melgares, the acting governor, indorsed thereon the following:

As he asks it according to law, and I understanding that no injury results to any third party, but, on the contrary, increase of stock raising and agriculture under the conditions asked.

Don José García de la Mora will proceed to give the possession, designating limits and doing what is proper, which being concluded he will transmit the *expediente* to this superior office, so that if it be approved the proper *testimonio* may be ordered to be given to the petitioner.

In execution of this order, José García de la Mora reported that he proceeded in company with Bartolomé Baca, about whom he voluntarily stated as follows:

Who, by his merits and conduct in the service of both majesties, as has been proved by the offices

which have been conferred upon him of alcalde mayor, and in other services in the field, the governors always appointing him commander of campaigns and scouting parties, which he always led with honor and valor, and in addition to all this he has always surpassed others in voluntary contributions, setting a good example to his inferiors. Wherefore, in reward of all these merits and services, etc.

He then states that he proceeded in his company to examine the tract applied for, and knowing it to be wild land, and no injury resulting to any third party, he placed him in possession, in the name of the King, "and I took him by the hand and led him over the whole tract, he shouting and plucking up grass and throwing stones in the name of the King, saying, 'Long live our beloved monarch, Don Fernando VII, whom may God preserve,' with hurrahs and shouts, and I shed tears of delight at his acclamations," etc.

The foregoing part of this grant seems to be wonderfully personal to Mora and Baena. It does not appear, however, from anything that has ever occurred that this grant was made or intended to be made to Baena on account of his services and contributions to the King, and nowhere can anything be found to that effect except the voluntary statement of the alcalde. I may challenge the correctness of his statement wherein he says that he led Bartolomé Baena over the whole tract, and also that upon Baena taking possession he (Mora) shed tears of delight at Baena's acclamations. It may be very formal, but I doubt very much the truthfulness of Mora's recitals, as well as the power or duty of the alcalde to make the same.

Continuing, he says:

I designated to him for his boundaries: On the south, the Ojo del Cuervo, following its line to the Ojo del Chico; on the east, the Cerro del Pedernal; on the north, the Ojo del Cibolo; on the west, the Altura de la Sierra (summit of the mountain range), the said gentleman being satisfied and grateful to the said governor for the benefit conferred upon him, binding himself to increase by his intelligence the limited waters which have been donated to him in order that his herds may be maintained, to which he is bound, transmitting the whole for your approval. He will satisfy the fees which may be charged to him.

Wherefore I transmit this to you, the superior authority, in order that, it being examined by you, you may decide as you deem just. (R., 9.)

The document is signed at San Fernando, September 12, 1819.

It will be noted that it was not intended that grant documents should be issued by the alcalde, but that the petition or order of July 2, 1819, and the alcalde's report of the delivery of possession should be returned to the governor, in order that he might take such further action as he deemed necessary, and that in case of his legalization of the proceedings a copy of the same might be given to Baca to serve as evidence of title.

There appears upon this paper some kind of an indorsement by Melgares, the Spanish of which, as it exists today, is "_____ de los límites por _____" "elgares," which is translated by Mr. Key as "_____ the boundaries by _____" "elgares." This is the only portion of this document which seems to be mutilated or torn so

that it can not be fully made out. It is admitted by the Government that the document produced was executed according to its purport, and that the signatures thereto are genuine, and that it is original in all its parts; but I assert it should never have been in the possession of Bartolomé Baena or any of his heirs, but should have been in the archives, and their evidence of title should have been a *testimonio*, or copy.

It was shown by the evidence that these documents were found by a grandson of the original grantee among the papers left by his father, and that his father was the son-in-law of Bartolomé Baena, the original grantee, and was the administrator of the estate of said Baena. The witness thus testifying, Bartolomé Chavez y Baena, also testified that he was born in 1834, after the death of his grandfather, Bartolomé Baena; that Baena lived in San Fernando (not on the grant). He had two sons, Manuel Baena, who died prior to his father, and Juan Baena. Witness stated that his mother was a daughter of Bartolomé Baena. He was the administrator of his father's estate, and after finding part of the present grant document he took it to Manuel Antonio Otero, and, after looking at it, Otero said, "Let us search for the other part and I will buy it from you and the other heirs," and that they did make the search, found the other part, but there was one little piece missing which they never found (R., 22). He identified the paper and the signature of his grandfather. He testified that Baena had seven children, and that the children after their father's death lived at Torreon, within the limits of the

grant, and some of them lived at San Fernando and other places. Witness' father lived on the grant from 1857 to 1863 at Torreon, and was a farmer. He testified generally to the use of the property from time to time by the herders for pastoral purposes, but was unable to give any definite account of the various settlements on the grant or the fact that subsequent to 1834 there were people living on the grant under the distinct and separate grants claimed to be from the Mexican Government, professes entire ignorance of the same, and does not understand what the ayuntamiento of Tomé means (R., 21-36).

This witness was recalled for further examination, for the purpose of comparing his testimony given before the Court of Private Land Claims with that given before the surveyor-general under the law of July 22, 1854, which is copied hereafter in full. An examination and comparison of the testimony given on these two different occasions shows the unreliability of his recent testimony in this case by reason of his interest:

Q. Did you testify in this case before the surveyor-general?

A. Yes, sir.

Q. Were you examined at length before the surveyor-general?

A. Yes, sir.

Q. Was not this question propounded to you:

"Q. Are you personally acquainted with the children and heirs at law of Bartolomé Baca, deceased; and if so, how long have you known them, and where have they lived since your acquaintance with them?" and did you not make this answer: "A. I did not know all his children, but I know all the

neirs and have known them as long as I can remember, they being my kinsfolk. They have all resided always here in the Territory?"

A. Yes, sir.

Q. Was not this question asked you, and did you not make the following answer: "Q. Do you know whether Bartolomé Baca, your grandfather, left any last will and testament in writing? If so, do you know where that will is?"—A. I do not know?"

A. Yes, sir.

Q. Was not this question asked you, and did you not make the following answer: "Q. Is it not true, upon reflection, that your grandfather left a last will and testament in writing, and did not that will come to your actual possession, and if to your actual possession, did you not deliver it to Manuel A. Otero or some other person;" and did you not make the following answer: "A. He may have made such a will, but I know of none and delivered none to said Otero or to anyone, but did deliver to said Otero the grant for said land?"

A. Yes, sir.

Q. Was not this question asked you, and did you not make the following answer: "Q. How many towns and settlements are there within the boundaries of the grant in question, and how long have they been in existence;" and did you not make the following answer: "A. There are the towns of Torreon, Tajique, and Chilili, and I know of no settlements, although there are said to be some small ones in the mountain. I do not know how long the towns have been in existence, but they were there when I first knew the localities and were settled after the death of Bartolomé Baca; unless it be Torreon, as to which town I can not say?"

A. Yes, sir. I did not say that they were settled after the death of Bartolomé Baca. (R., 53, 54.)

José Antonio Padilla y Montoya testified on behalf of the plaintiffs that he was born in 1808 and had lived at Manzano for forty years, and prior to that time at Valencia. Has known of this grant to Bartolomé Baca since 1829. When he first went to Torreon, about 1829-30, Juan Baca and Manuel Baca were there with *peones* (servants). They had a corral at Torreon, and houses. He also testified that all of them who lived at Manzano were his servants. They herded their horses at the Estancia. He saw an irrigating ditch which was running along at the beginning to the Vega Blanca, at Torreon, and there was also an *acequia* on the other side, and these were for the gardens. They had driven him away from the *acequia* because it belonged to them exclusively. All of the servants of Baca at Torreon planted some land with corn, beans, and a garden, but he did not know how much. Knew Bartolomé Baca in his lifetime very well. He says that at the time Baca died there were no other persons except his servants and employees living at Torreon; that the town consisted of four or five houses of the workmen. He saw a great many horses, cattle, and sheep upon the grant; heard the sons of Baca say that the property belonged to their father. This witness stated that there was a spring at Torreon, and testified as follows:

Q. That is how it got its name, wasn't it?

A. Torreon was built there by Don Bartolomé Baca.

Q. Then it did not have the name of Torreon before Bartolomé Baca went there?

A. No, sir.

Q. He gave it that name?

A. The people gave it that name because Bartolomé Baca built a torreon there.

Q. You remember it?

A. Yes, sir; I remember that it was because Don Bartolomé Baca built the torreon there, and it was called the torreon of Don Bartolomé Baca.

He also testified that he knew a man by the name of Nerio Antonio Montoya, who lived at Ojo del Monteno and had a ranch at Ojo del Chico. He knew a place called Tajique, also Chilili, and knew a place called Tomé, which lies to the northwest of Manzano about 10 leagues. He knew a man, also, by the name of Antonio Sandoval. He also knew Juan Baca, son of Bartolomé Baca, and saw him at his father's house in San Fernando. On cross-examination, the witness stated that he did not know what relations existed between Nerio Antonio Montoya and Bartolomé Baca, except that they were neighbors. It was after Baca's death that Montoya came to the hog ranch at Chico. Bartolomé Baca had hogs at that place for some years. He knew a man by the name of Marian Torres, who lived at Manzano, very well, and he had also lived at Torreon. He worked for Bartolomé Baca as a sheep herder and also did other work. Knew Clemento Chavez, who lived at Enlamés, and he lived at Tomé after he was married. Does not know whether he ever worked for Bartolomé Baca or not. (R., 38-45.)

The plaintiff read the deposition of the following-named witnesses, their testimony being taken before the surveyor-general in 1878-79 in relation to this claim

and filed with that officer under the provisions of the law of July 22, 1854, it being shown that said witnesses were deceased at the time of the trial of this cause in the Court of Private Land Claims. The difference in the testimony of the witnesses as given in 1878 and 1879 and on the trial in the Court of Private Land Claims is very marked and noticeable.

Jesus Suavedra, presented to the surveyor-general on September 13, 1878, by the claimants for the grant and examined by their attorney, stated that his age was 75 years, was acquainted with the tract known and called the Estancia grant in Valencia County, Territory of New Mexico; that the boundaries were, on the north the Cibolo Spring, on the east the Cerro del Pedernal, on the south the Cuervo Spring, and on the west the summit of the mountain. He lived on the grant as the servant of Bartolomé Baena from 1819 until he died; Baena had a log house on the land and some corrals, 40,000 head of sheep, 300 mares, and 900 head of cattle. The house was occupied by the sons of Bartolomé Baena, José Manuel Baena, and Juan Baena. He was present when Bartolomé Baena was placed in possession of the property in the year 1819, when he went to live upon the grant; Baena died at the little town of San Fernando, near the town of Tomé. Witness further testified that there were only two towns on the grant, Tajiique and Torreon, the former having some eighty and the latter some fifty families. Bartolomé Baena never resided himself upon the land, but made regular visits to his *hacienda* to see his sons and to look after his property. When the sons were on the grant they lived at Estancia

Spring. Witness never knew of any other grant covering any portion of the Baena grant prior thereto and knows of no one since; does not know of a grant to the town of Tajique or to the town of Torreon; never heard anybody claim any portion of the land adverse to Bartolomé Baena. (R., 65-68.)

Miguel Lucero testified before the surveyor-general on the same day that he was 80 years old; resided in the town of Manzano; knew of the tract called the Estancia tract, and it was bounded on the north by the Cibolo Spring, on the east by the Pedernal Hill, on the south by the Laguna del Cerro, and on the west by the Crow Spring, and he has known the tract described since 1816. He had always lived at Manzano, but had often been on the land in the employment of Baena looking after stock. He was present at the time the act of possession was delivered by Mora to Baena, and knows the boundaries of the grant because they have been shown to him by Bartolomé Baena. He was on the grant a short time after Baena's death, gathering up the cattle for the wife of Baena. Baena died in 1835, having been placed in possession of the property in the year 1822, he thinks in the month of April; he knows the identical tract of which Baena was given possession, as he was present at the time.

Q. Did the alcalde at the time go to the different boundary objects, and what did he do at the time of executing the possession?

A. The alcalde with his finger pointed out the respective boundaries, and afterwards took the cordel—a rope—and measured to them.

Baca never lived upon the land, but lived at San Fernando with his family, and he never knew of his claiming any other tract of land except his holding at San Fernando, although he was a rich man and had considerable land, which had been acquired by purchase. There are two towns or settlements upon the grant, Torreon and Tajique, but he does not know under what title the inhabitants of these towns claim. The two towns have about forty families each, and they are about all the inhabitants in the neighborhood. (R., 68-70.)

Mariano Torres, another witness who testified before the surveyor-general, stated that his age was 70 years, his residence Las Tablas, Lincoln County; has known the Estancia grant all of his life; its boundaries are, on the north the Cibolo Spring, on the east Pedernal Hill, on the south the Crow Spring, and on the west the summit of the mountain; the land has always been known as the property of Bartolomé Baca, now deceased, and it was occupied by him until his death, which occurred many years ago. When the witness first heard of the grant he lived in San Fernando in the neighborhood of Bartolomé Baca, and he continued to reside there until 1846. He became acquainted with the boundaries of the grant in 1821 as a stock herder for Baca, and Baca's son stated the boundaries of the grant to him. He stated that all the people of Torreon and vicinity understood what the boundaries of the grant were, as also the people along the Rio Grande and Rio Abajo. Bartolomé Baca never lived on the grant, residing at San Fernando; at that time there was no town at Torreon, only a ranch, which was Baca's property. The town of Torreon now has a

a population of more than twenty-five families, as Baca permitted several families to go and occupy the place, and in this way there is now a town there, he inviting families to go and live there on account of the protection they would afford his interest. Baca erected a torreon or blockhouse, *from which comes the name Torreon for the town now there*; there was no other settlement or rancho upon the tract.

(NOTE.—This witness is evidently mistaken, as the tract was called the Torreon tract in the petition when it was made, and consequently the place could not have taken its name as the witness indicates.)

There are also upon the tract the towns of Tajique and Chilili. The town of Torreon is about a mile north of the Crow Spring. Tajique was settled probably in 1842 or 1844 by poor Mexicans, small farmers and laborers. Bartolomé Baca owned lands at San Fernando, Peralta, Joya de Cervilleta, and at Enlames, all of which were held by purchase, except a piece of land granted to him at San Fernando. (R., 70-72.)

Jesus Saavedra y Romero was examined before the surveyor-general on January 8, 1879, and stated that he was 84 years old; was present at the *ayuntamiento* of Tomé at the time action was taken on the petition of the Manzano people for their grant of land. (Copy of this grant is found in the record, p. 91.) It was in the year 1829, after the boundaries of the Manzano grant were established, that Don Bartolomé Baca, sympathizing with the people of Manzano, ceded to them all the land within their boundaries, with the exception of his cultivable land.

(This can not be true, because the town of Manzano, according to the testimony of all the other witnesses, was entirely outside of the grant, and no reference is made in the title papers to the release by Bartolomé Baaca of any claim to the grant.) Witness understands the north boundary of the Manzano grant to be the Torreon Creek. He has no knowledge of Baaca ever surrendering any other land to any other people. (R., 72.)

On December 3, 1879, Clemente Chaves testified before the surveyor-general that he was 69 years of age and lived at Tomé, Valencia County; was acquainted with the grant known as the Bartolomé Baaca or Torreon grant, and first knew it in 1822; knew Bartolomé Baaca from 1816 to 1833, when he died. Baaca occupied the land in question with his herds of sheep, cattle, and horses, and had corrals there. Baaca was in occupation in 1822, and witness was there, but he does not know whether Baaca lived on the land or not. Baaca lived in San Fernando, but witness saw him on the land with his peons. The uncle of witness was Baaca's chief herder, and lived at Manzano. Witness heard that Baaca went on the tract in 1821, but he has no positive recollection of seeing Baaca on the land after 1822. The Navajoes compelled Baaca and others to leave that part of the country and bring their herds down to the vicinity of Abó Pass. The Navajoes were killing men and stealing stock in the neighborhood. Up to the time of his death Baaca was the recognized owner of the grant, and up to 1833 Baaca had herds on the grant. Between 1822 and 1833 the Indians were part of the time peaceable and part of the time at war. Baaca had sons and daughters who survived him, but he never knew

of any of the children occupying the land. Witness was a senator in the Territorial legislature in 1864 and 1865, and was sheriff of Valencia County in 1850, and was also justice of the peace. He does not remember when Bartolomé Baca abandoned the grant. In 1829 Felipe Montoya, Francisco Moya, Antonio Chaves, Juan Cris-toval Sanchez, and others took possession of El Torreon, leaving the ranch of Bartolomé Baca, where he had his sheep and corrals, to him; that Baca occupied, as he understood, about 300 varas in width from east to west and from north to south, but he does not know how far it was to the boundaries of the grant, but so far as he knew Baca claimed no more than three hundred yaras, and this was under cultivation for a distance of about one hundred varas from north to south, and he thinks this was in 1829 or 1830, but Baca may have had this land under cultivation prior thereto; that the persons he mentioned above came in by consent of Baca, who reserved the tract above referred to to himself for cultivation, and also the balance of the tract; that when Felipe Montoya and Francisco Moya and the others took possession of their land they left Bartolomé Baca 300 varas for his own use and to cultivate or rent out to the others, and in addition to these persons José María Baca and Eulogio Sais came in and took possession of the remainder of the grant, but Felipe Montoya and Francisco Moya were the principal claimants of the lands, and they made application, he thinks, for the land to Antonio Sandoval, who was justice of the first instance. (R., 73-75.)

This witness also testified that he was born in 1810 and has lived at Tajique since 1833, except three years;

has known Bartolomé Baca from his earliest recollection, and he died in 1834; has known the grant since 1819; lived at the town of Tajique and the immediate vicinity three years, the town being a league from the grant boundary. Baca lived at San Fernando, but he has seen him on the grant looking after his stock; but does not know of others than Baca and his heirs living on the grant and about the town erected on the tract. The town is called Torreon, and, as the witness is informed, was settled by persons upon invitation and with permission of Baca, and he knows of no other town on the grant. Subsequent to 1819 the property was respected as that of Baca, and subsequent to the death of Baca the property was recognized and respected as that of his heirs. Baca had ranches at Torreon and at Estancia—that is, at Torrean Spring and at Estancia Spring—and these were the only places where he saw ranchos. Witness stated that other parties besides the heirs of Baca understood that Baca owned the grant, to wit, Matias Sanchez, in the years 1839, 1840, and 1841, at Tajique; José Sanchez, at the same time and place, and also José Lorenzo Otero and Antonio Otero; Bernardo Chavez, now deceased, in 1837, and sundry other people. (R., 77-80.)

A. M. Bergere, husband of the plaintiff, testified as to the boundaries of the grant as he understood them and as to the search made for mesne conveyances. (R., 47-49.)

Miguel A. Otero, another of the claimants, testified as to the attempt to find the original mesne conveyances from the heirs of Baca to the Oteros. (R., 49-51.)

Clarence Key, a translator, testified as to examination of the archives in the surveyor-general's office of New Mexico, with reference to the custom of delivering original grant papers in lieu of *testimonios*, and as to the record usually made thereof, but his testimony throws very little light on the subject. (R., 51-53.)

This closed the case in chief for the plaintiff.

On behalf of the Government, a paper, purporting to be a certified copy of the last will and testament of Bartolomé Baena, the original grantee, was offered in evidence, for the purpose of showing that at the time of his death in enumerating his property he does not mention the fact that he owned this enormous tract of land or that he had any interest in the same. The paper was not offered as a certified copy of the will, but as a copy of a written declaration made in 1834. (R., 81-85.)

In relation to this document, Mr. Tipton, a very reliable expert and a gentleman more familiar with the archives and title papers in New Mexico than any other living man, with it before him, testified that each leaf of the document bore the indorsement of the legalization of the use of the paper in the handwriting of Francisco Sarracino, a prefect of that district. As to the signature of José Salazar, the witness was not able to testify. As to the signature of José María y Baena, one of the witnesses, he thinks he has seen it in the archives, but does not express an opinion. The signature of J. de Madariaga he has seen before and he believes it to be genuine. The signature of Miguel Aragon he believes to be genuine and gives his reasons therefor. The signature of

Jacinto Aragon he believes to be genuine. As to the whole document, he has seen the same handwriting frequently in the archives. His testimony in relation to the various signatures will be found in the record (pp. 62-64).

The Government offered in evidence the title papers in the following grants :

MANZANO GRANT, 1829.

On September 22, 1829, on behalf of himself and in the name of the settlers of Manzano whose names appear in the margin, José Manuel Trujillo presented a petition to the corporation of Tomé, stating that not having deed of possession to the town which they had settled, and the site of said town not being known to be owned by anyone, they requested the *ayuntamiento* to grant possession thereof, giving the boundaries from north to south, from Torreon to the old mission of Abó, etc. (R., 91.)

On September 25, 1829, the corporation of Tomé referred the petition to the territorial deputation, with the remark that the corporation knew of no obstacle against making the grant to the petitioners, the only objection being found in regard to the arable land therein situated belonging to retired Lieut. Col. Bartolomé Bacá, who will be satisfied with the land which, as a new settler, he may acquire, together with that which he has purchased from other settlers, promising that although he will not establish his residence there, he will cultivate and improve the lands which may be recognized as his. (R., 91.)

On the 28th of November of the same year the territorial deputation decreed upon the report of the *ayuntamiento* of Tomé that the justice of the jurisdiction should place the petitioners in possession of the land asked for, giving to each one the tillable land he may be able to cultivate, leaving the remainder to such other individuals who in the future might establish themselves thereon, limiting the boundaries to one league in each direction, and in compliance with this decree the alcalde, Jacinto Sanchez, proceeded to deliver possession of the same and make allotments. (R., 92.)

No mention is made in any of these proceedings that Bartolomé Baena ever owned or claimed to own any large tract or grant which might by any possibility conflict in any way with the same.

NERIO ANTONIO MONTOYA GRANT, 1831.

This grant lies entirely within the outboundaries of the Bartolomé Baena grant, and was at the time the grant was heard before the surveyor-general, and is still, claimed by one of the witnesses for the Government, J. Francisco Chavez, to whose testimony we will call attention.

The petition for this grant was directed to the corporation of Tomé on February 28, 1831, and makes no mention of Bartolomé Baena or his interest in the property. (R., 85-86.)

The report of the *ayuntamiento* shows that no injury would result to anyone, but it would be of great advantage in the interest and encouragement of agriculture, and recommended to the excellent territorial deputation that the grant be made. (R., 86.)

On November 12, 1831, the territorial deputation authorized the constitutional alcalde to execute the documents to the grantee which would secure the grant. (R., 86.)

Then follows the act of the alcalde, wherein he recites that when he delivered possession to Montoya he proceeded to the land and stood thereupon, and no injury whatever resulting he designated the boundaries, etc. (R., 86-87.)

Then follows a conveyance in 1848 by Nerio Montoya to Juan Perea and his sister, Dolores Perea.

Colonel Chavez, who owns this grant, testified before the surveyor-general and also, on behalf of the Government, at the trial of the cause in the Court of Private Land Claims, and the discrepancies between his testimony given in the Court of Private Land Claims and before the surveyor-general are very noticeable.

Testifying on the trial of this cause, he stated he was 61 years of age, was born in New Mexico, and had lived there all of his life with the exception of the time he was away at school. Knows the general location of the Bartolomé Baca grant, and has been familiar with it since 1858; since that time has been quite familiar with it. He built a house upon the grant at Ojo del Medio in 1858, nobody being in possession of the grant at that time. He first heard of the grant at that time, although he was not notified that a grant had been made, and he understood that it covered the Nerio Montoya grant. Except from their statements, he did not know that the heirs of Baca claimed to own the Baca grant or were in possession of

it at any time. Juan Chavez, the father of Bartolomé Chavez y Baca, showed him the boundaries of the grant from his house, but he did not go over them.

Q. Did any of the heirs and legal representatives of Bartolomé Baca claim to own any interest in the grant at the time this matter was pending before the surveyor-general?

A. Yes, sir; they did.

Q. Didn't you testify before the surveyor-general, in reply to such question, that "as to the dead persons I do not know that they ever laid any claim to the grant; the few who had lived upon it, both from their actions and statements, never laid any claim to the grant until within the last six or seven years?"

A. I did, sir.

Q. You have an arrangement by which you receive the title in case this grant is confirmed?

A. I have, sir.

Q. That is the reason you have not pushed that claim?

A. Yes, sir.

Witness said that at the time he testified before the surveyor-general he did not know what grants were claimed to conflict with the Bartolomé Baca grant. He had an idea that it conflicted with the Nerio Montoya grant and the Tajique and Torreon grants, these being all that were claimed at the time. He asked the surveyor-general's clerk, Mr. Miller, to let him see the papers of the grant, and he discovered that the Sandoval grant conflicted. In 1858 Manzano was the largest town in New Mexico. There must have been 3,600 people there at the time, and the whole country was very prosperous. A great drought followed, however, and the

country was depopulated. At the time there were about 800 people at Torreon, and all the towns were prosperous, and when rains were seasonable they raised fine crops. At the time he was before the surveyor-general he was there in the interest of the Manzano people, whom he represented, and the statements he made at the time he believed to be true.

On cross-examination by counsel for the plaintiff, the witness stated that he never knew of the grant papers until the time he went to Santa Fé to testify before the surveyor-general; did not know at the time he gave his testimony that the papers had been discovered, and his testimony was upon the theory that he believed they had no claim to the grant. One of the witnesses whose testimony was taken had told him about the Bartolomé Baca grant and that they used to keep people away from it. One of the grandchildren of Baca lived at Tajique, and he had hauled the stone to build his (Chavez's) house.

In answer to a question by the United States attorney as to whether or not at the time he testified he knew the papers of the Baca grant had been found, he stated that he had come to Santa Fé with certain purposes, and asked Mr. Miller, the chief interpreter of the surveyor-general's office, if there was any such grant; that he was in doubt about the title, and Miller let him have all the papers in the case, and he looked over them, and told the Manzano people so. This was the first time the witness had ever seen the Bartolomé Baca papers or examined them. He had heard the Bartolomé Baca people say they had a grant, but had lost the papers, and could not find them. (R., 58-62.)

TAJIQUE GRANT, 1834.

This grant appears to have been made to Manuel Sanchez on his petition of March 9, 1834, on behalf of himself and a number of individuals, and in their petition they stated that they had discovered a tract of land suitable for cultivation at the point Tajique, which was vacant, and consequently no injury would result to third parties. (R., 96.)

On March 17, 1834, Governor Sarracino directed the constitutional justice of Valencia, to which jurisdiction Tajique then belonged, to make the division asked for within the boundaries set forth, provided no injury resulted to any third party, and stated that the grant was temporarily made by him in order to avoid delay in planting, but that it was subject to the confirmation of the most excellent territorial deputation when it met. (R., 97.)

Vicente Otero, the constitutional justice of Valencia, stated in his report that he delivered possession of the same, and again as late as December he delivered possession of parts of the same lands to others. (R., 97-98.)

In all these proceedings not one word is mentioned as to the claim of Bartolomé Baena or his heirs, and this grant was made about the time of his death, it lying within the boundaries of the claim made by the claimants in this case.

CHILILI GRANT, 1841.

On March 8, 1841, for themselves and twenty others, Santiago Padilla and six others petitioned for the grant of a tract of land at the town of Chilili, which was abandoned and without any owner, and that they be placed in possession of the same. (R., 99.)

On March 20, 1841, Governor Armijo directed Antonio Sandoval to place the parties in possession of the land, giving them the boundaries and limits as set forth by them in their petition, informing them that as colonists they were to remain there without disposing of the land for the four years required by law. (R., 99.)

Then follows the report of the delivery of possession by Antonio Sandoval. (R., 99-100.)

This grant is within the outboundaries of the present claim, and no mention is made in any of these proceedings that Bartolomé Baca, his heirs, or anyone claiming under them, had or claimed to have any interest in this property.

ANTONIO SANDOVAL GRANT, 1845.

On December 5, 1845, Antonio Sandoval, a very prominent man in the Territory, petitioned the governor of the Territory for a large tract of land known as the Salt Lakes tract, stating that he makes the petition because the land is vacant and in a condition of mortmain, and that it will prejudice no third party. (R., 88-89.)

On December 7, 1845, Governor Armijo, in consideration of the services of Sandoval, which he recites, grants him the land according to the boundaries that he asks. (R., 89.)

Then follows the certificate of Ramirez, treasurer of the department, that Sandoval had rendered services and contributed money to the Government. (R., 89-90.)

Then follows the act of possession of December 15, 1845, the delivery being made to Juan Antonio Aragon,

the agent of Sandoval, of a large tract of land of between 400,000 and 500,000 acres, which conflicts very materially with the claim of Baena. (R., 90.)

The title papers in these various grants are offered for the purpose of showing that from 1829 to 1845 the various officials and official bodies of New Mexico had occasion to investigate and report whether or not the land embraced in the Baena claim as made to-day was then vacant or claimed by anyone, and invariably and in every instance it was reported that the land was vacant and unclaimed, and I take it that these various actions of the officials and official bodies constitute the strongest proof possible that neither Bartolomé Baena nor his heirs or anyone claiming under them ever made, during all that time, a claim to this immense tract of land. Considering such testimony in connection with the irresponsible and unreliable statements of sheepherders and *peones* leaves little doubt as to the weight of the testimony being in favor of the contentions of the Government.

BRIEF AND ARGUMENT.

It is apparent from the title papers that no rights were to pass to Bartolomé Baena by any action of the alcalde without the subsequent approval of Acting Governor Melgares; nor was the alcalde authorized to deliver to Baena any instrument evidencing his action in the premises. All of this was specifically reserved by the governor for his action before it possessed any validity. (R., 8, 9.)

The questions arise, Did Acting Governor Melgares approve the action of the alcalde; did he issue to Baena

the *testimonio* as evidence of title, and was the original deposited in the archives as perpetual evidence of Baca's rights and notice to all the world of the disposition of the land?

The evidence negatives each of these questions.

1. The claimants do not produce the *testimonio*, the primary evidence of title, nor do they assert that such an instrument was ever issued. Hence, that particular and all-important action should be resolved against the *bona fides* of the claim.

2. The evidence of title produced upon the trial, from private and improper hands, was the original expediente, with an indorsement thereon by Melgares so mutilated that it is now impossible to determine what it was. In every other respect the instrument is fairly preserved. This instrument without the approval by the governor had no validity, and constituted no evidence of title against the Crown, even had it been found in its proper place among the Spanish archives, unless the *testimonio* which was provided for (R., 9) was shown to have been issued and delivered and had been lost or destroyed.

It appears from the evidence of Bartolomé Chaves y Baca, grandson of Bartolomé Baca, the documents produced were accidentally found by him among the papers of his father in a box of papers that had belonged to Bartolomé Baca, and that they were taken to Manuel Antonio Otero. Another search was then made for some parts missing, upon Otero suggesting he would buy them. This search resulted in all being found *except one little piece* (R., 22). At that time witness sold his interest to

Otero (R., 29). These parts, together with the testimony of this witness as to possession and his knowledge as to the existence, claim for, and extent of the grant, clearly justifies the application of the maxim "*Omnia prae sumuntur contra spoliatorem.*"

If this mutilated indorsement of Melgares is to be treated as a nullity, the expediente in all its parts must be treated as constituting no evidence of title against Spain, consequently none against the United States. Without such approval the action of the alcalde was void. (See decree, R., 9.)

Under all governments having public lands to distribute amongst its citizens, a record of the acts of officials and final grant are required to be kept in order that the Government may know the public lands, and the citizens have proper means of verifying and protecting their titles.

The proper Government record in this case was found more than half a century after the date of the alleged grant in an old box in the possession of the grantee to present claimants. During this period the country had changed sovereignty twice, without any notice appearing by the public records, or by actual possession and assertion of title of an open, notorious, and public character so as to place the Mexican Government or its officials upon their inquiry.

The best evidence that the claimants were not asserting such title and ownership as to put anyone upon inquiry is the report of investigations that were officially made by the various Mexican officials from 1829 to 1845.

- Manza grant (1829), R., 91-92.
Nerio Antonio Montoya grant (1831), R., 85-87.
Tajique grant (1834), R., 96-98.
Chihili grant (1841), R., 99-100.
Antonio Sandoval grant (1845), R., 88-90.

All the papers relating to the foregoing grants are admitted to be genuine. (R., 55.) It is immaterial whether any of these grants were lawfully made or not. The recital of facts by officials and official bodies of whom official information was sought as to the occupancy of and claim for this immense tract of land furnish almost conclusive evidence that the land was vacant and unclaimed, and the granting of the lands petitioned for under the foregoing claims *would not injure any third party.*

Bartolomé Baca, from independence, in 1821, to the time of his death, in 1834 or 1835, was one of the most prominent men in New Mexico, part of the time the presiding officer of the Territorial deputation, and it is extremely probable his ownership of such a tract of land, so situated and so valuable, would likely have been a matter officially and publicly known, especially to the ayuntamiento of Tomé, having jurisdiction over the same, and to Antonio Sandoval, another prominent and wealthy Mexican.

The Government offered in evidence what purports to be a certified copy of the will of Bartolomé Baca. (R., 81-85.) This instrument was obtained from the wife of a grandson of Baca (R., 55-56), and its certification is reasonably well shown. (See testimony of Mr. Tipton, R., 62-64.)

The document was offered not as a will, but as a declaration by Baca during his lifetime, and just prior to his death, of the property he owned; this grant, it will be noticed, is not mentioned, although the instrument is on stamped paper for the years 1833 and 1834, and seems regular and carefully drawn.

This declaration, and the reports of officials from 1829 to 1845 as to the property being vacant, unoccupied, and unclaimed, and taking the scope and wording of the will, leaves but little doubt of its being a true copy and entitled to be considered, in connection with the other facts and circumstances, not as a will, but as an admission or declaration.

The foregoing considerations justify me in the conclusion that when Alcalde Mora returned the expediente to Melgares his indorsement was a disapproval, and the papers, being of no further value, were never deposited in the archives, and in some way came into the possession of Baca. This theory also accounts for the absence of any *testimonio* as evidence of title; it also accounts for the absence of active assertion of title during Baca's lifetime between 1829 and 1834 or 1835. I have no doubt Baca had stock on the grant prior to his death, as well as other people. Anyone acquainted with that country, even at the present time, can fully appreciate of how little value as evidence of possession and title is pasturing and grazing sheep, cattle, and horses over the vast areas of unfenced lands in New Mexico and Arizona; imaginary lines are and always have been ignored; boundaries

of land grants have never been respected in the use of lands for such purposes.

Under the Mexican Government a grant was not proved by pasturing or cutting timber. (*De Arguello v. U. S.*, 18 How., 539; *U. S. v. Teschmaker*, 22 How., 392; *U. S. v. Vallejo*, 22 How., 416.)

The effect of grants by the Crown in respect of wood, waters, and pastures is fully and carefully disclosed in Book IV, title 17, law 5, Laws of the Indies (vol. 2, p. 57). (See 2 *White*, p. 56, *see*, 93.)

The policy of Spain and Mexico, on account of the aridity of the country, was to give general use, without proprietary rights, to those first appropriating pastures and watering places. On November 25, 1818, Nicholas Garrido, as attorney-general for east Florida, had occasion to pass upon the attempt to hold large tracts of land for pasture, in which he says:

The concession of a great extent of land for the rearing and pasture of cattle constitutes no more than the usufruct of it for the time agreed upon, but the grantee has not, nor never had, the most remote right to solicit the proprietorship, for there is no law or regulation upon which to found it, and consequently the land does not go out of the class of public lands, since it is the same as if held on rent. (2 *White*, 285-287.)

This opinion was announced less than a year prior to the grant in question. If this principle disclosed in the laws of the Indies (2 *White*, 56) is to receive serious consideration, the claim can not be sustained as one having been *lawfully and regularly derived from Spain*, nor

as having any status which appeals in the least to a chancellor by reason of the good faith of the grantee and those claiming under him occupying, improving, cultivating, and expending time, labor, or money in its development.

Grants are to be construed strictly in favor of the King. (*U. S. v. Arredondo*, 6 Peters, 738; *U. S. v. Hanson*, 16 Peters, 198; *U. S. v. Reysleek*, 15 Peters, 223.)

In the court below some force was sought to be given by reason of the instruments being over thirty years old, proving themselves as lawful and binding instruments according to their terms.

The rules applicable to instruments such as these do not aid claimants.

Instruments thirty years old prove themselves, but such documents must be free from just grounds of suspicion and must come from the proper custody. (1 Greenleaf Evidence, see, 570.)

If on the production of the instrument it appears to have been altered, it is incumbent on the party offering it in evidence to explain this appearance. Every alteration on the face of a written instrument detracts from its credit and renders it suspicious, and this suspicion the party claiming under it is ordinarily held bound to remove. (1 Greenleaf Evidence, see, 564.)

Applying the maxim "*Omnia presumuntur contra spoliatorem*," and the rules just quoted from Mr. Greenleaf render the instruments offered as evidence of title incompetent and insufficient for that purpose, from which it follows the grant is not entitled to confirmation for want of sufficient proof.

The court below confirmed the claim, as an imperfect (equitable) title, and limited the extent to eleven square leagues, as provided by law. (Act 1891, sec. 13, subdivision 7.)

A finding of facts was made and embodied in the decree (R., 103) to the effect that certain proceedings were taken upon the petition of Baena resulting in Alcalde Mora placing him in possession. Also finds "*that said tract of land called the Torreon, had been in the actual possession of Bartolomé Baena for more than four years from the date of the grant on said September 12, 1819.*" Also that petitioner had succeeded to the rights and interests of the heirs of Baena.

It declares upon these findings that as a matter of law the grant to Baena was imperfect at the time of the cession and that petitioner for herself and others were entitled to a confirmation of eleven square leagues of land within the boundaries of the tract of land called the Torreon, granted to said Baena, and of which he was put in actual possession. (R., 103.)

It is contended on behalf of the Government that no grant of any character was ever made to Baena, and the evidence does not establish that fact.

The right to make the grant and issue evidence of title (testimonio) was expressly reserved and not intended to take place, nor was the possession to be valid or binding so as to constitute any vested right until the action of the alcalde, Mora, was approved by Melgares. (R., 9.) If I am correct in this construction of the recitals contained in the expediente, no title of any grade was passed to Baena by the act of possession or otherwise.

The court did *not find* the proceedings taken by the alcalde, under the order of Acting Governor Melgares (R., 9), had ever been returned "to this superior office, so that if it had been approved the proper testimonio may be ordered to be given to the petitioner."

It did *not* find that the action of the alcalde had ever received the approval of anyone.

It did *not* find that the *testimonio* had ever been executed and delivered to Baca as evidence of his title.

It did *not* define the boundaries of the "*tract of land called the Torreon*."

The act creating the Court of Private Land Claims provides, section 7 (Reynolds, p. 10), as follows:

* * * and by a final decree to settle and determine the question of the validity of the title and the boundaries of the grant or claim presented for adjudication, according to the law of nations, the stipulations of the treaty concluded between the United States and the Republic of Mexico at the City of Guadalupe Hidalgo, on the 2d day of February, in the year of our Lord eighteen hundred and forty-eight, * * * and the laws and ordinances of the Government from which it is alleged to have been derived, and all other questions properly arising between claimants *or other parties in the case* and the United States, *which decree shall in all cases refer to the treaty, law, or ordinance* under which such claim is confirmed or rejected; and in confirming any such claim, in whole or in part, the *court shall* in its decree specify plainly the location, boundaries, and area of the land the claim to which is so confirmed.

It seems to me these provisions of the law are mandatory and, indeed, wholesome, yet they have been overlooked in this and many other cases.

The best that can be said for this claim is that the possession given was *preliminary to a grant*, if upon final report by the alcalde the governor saw proper to approve. Until this was obtained it amounted to nothing more than a permit to occupy; such occupancy created no equity against the Crown.

Spain and Mexico were under no obligations to grant this land to Baca, and never did do so, and it must fall within the principle announced in the cases of *United States v. Clark* (8 Peters, 436), and *United States v. Peralta* (19 How., 343), and *United States v. Serreno* (5 Wall., 451). The preponderance of the evidence in the case shows that Baca and his heirs never attempted to hold possession adversely to the Crown or Government of Mexico, and therefore I submit the claim can not be sustained as an equitable one entitled to a confirmation to the extent of eleven leagues.

If the claim was imperfect, then it was forfeited prior to the cession of the territory to the United States. "

By the terms of the petition Baca obligated himself, if possible, to "open lands for cultivation, whether irrigable or dependent upon the seasons, for the advancement of agriculture, and, although the water sources it contains are small and uncertain, he proposes to improve them with reservoirs and other appliances which will secure every advantage possible." (R., 8 and 9.) Such was the consideration for the grant as solicited by Baca. Under the

eighth subdivision of section 13 of the act creating the Court of Private Land Claims this grant is not entitled to confirmation for failure to establish, at least to a reasonable extent, the compliance with the foregoing promises.

But I contend the grant or concession was forfeited by abandonment and the resumption of sovereignty over the same by the Mexican Government from 1831 to 1845.

Nerio Antonio Mentoga grant (1831), R., 91-92.

Tajique grant (1834), R., 96-98.

Chihili grant (1841), R., 99-100.

Antonio Sandoval grant (1845), R., 88-90.

It is earnestly contended that some judicial proceedings should have taken place under the former Government for the purpose of having a forfeiture specifically declared.

I have never been able to find under the Spanish or Mexican law any mode of procedure or uniform practice in this respect. The moment the grantee left the land vacant and unappropriated for the purposes for which it was granted, *ipso facto* forfeiture occurred, and the land fell back into the great body of public domain, to be again disposed of by the Government under the laws regulating the disposition of public lands generally.

This court, under circumstances somewhat similar, in the case of *McMicken v. United States* (97 U. S., 204-218), and cases there cited, has settled this question against the claimants.

"Here no title was granted; nothing but a permit to inhabit and cultivate as preliminary to a grant. It might have ripened into an equitable title had the conditions been fulfilled, or even if a fair effort

had been made to fulfill them, or if any plausible excuse could be offered for their nonfulfillment. But no attempt even appears to have been made to fulfill them, and the Government proceeded to make other dispositions of the land. There is no need of any more formal assertion by the Government of its right to resume the proprietorship. This court has in several cases maintained the doctrine that an actual entry or office found is not necessary to enable the Government to take advantage of a condition broken, and to resume the possession of lands which have become forfeited. It was so held in *United States v. Repenning*, 5 Wall., 211; *Schulenbergs v. Harriman*, 21 Wall., 44; and *Farnsworth v. R. R. Co.*, 92 U. S., 49. In *United States v. Repenning*, the court says: The mode of asserting or assuming the forfeited grant is subject to the legislative authority of the Government. It may be after judicial investigation, or by taking possession directly, under the authority of the Government, without these preliminary proceedings. In the present instance we have seen the laws have been extended over this tract, the lands surveyed and put on sale, and confirmed to the occupants or purchasers, and, in the meantime, an opportunity given to all settlers and claimants to come in before a board of commissioners and exhibit their claims. This is a legislative equivalent for the reunion by office found. The same doctrine was applied in the case of Farnsworth in relation to a grant of lands and privileges for the construction of a railroad.

After giving this claim a careful and charitable investigation, I am still impressed with the firm belief, from all the testimony, that the conclusion originally formed by me is correct. When the alcalde, Mora, returned the

expediente, Acting Governor Melgares indorsed his disapproval thereon, and the papers, being of no further value, were never deposited in the archives, and in some way came into the possession of Baca. The grant is too old (1819), too large and valuable, has been the subject of too much official investigation and occupation by hundreds not claiming under it, without knowledge of Baca's claim, to arrive at any other reasonable conclusion, and I think the Court of Private Land Claims should have rejected the same for want of sufficient proof.

Respectfully submitted,

HOLMES CONRAD,

Solicitor-General.

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Special Assistant to the Attorney-General.



No. 279 and 299

Office Supreme Court U. S.
FILED.

APR 23 1897

JAMES H. McKEE,

CLERK

Sup^r. By. of Atty. James H. McKee,
(Conrad) for U. S.

Filed Apr. 23, 1897.

In the Supreme Court of the United States.

OCTOBER TERM, 1896.

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the other heirs of Manuel Antonio
Otero, and Miguel Antonio Otero,
appellants,

} No. 279.

v.
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THE UNITED STATES, APPELLANT,

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**SUPPLEMENTAL BRIEF ON BEHALF OF THE
UNITED STATES.**

By reason of the additional brief filed by Mr. Vroom in this case, I have deemed it advisable to obtain permission of the court to file a supplemental brief, attempting to cover all of the points raised in both of the briefs on behalf of the claimants in this case.

First.

Primarily, I contend most earnestly that the claimants of the Bartolomé Baca grant are absolutely without title, either legal or equitable, and that therefore the decree of confirmation should be reversed and their petition dismissed. Out of abundant caution the Government has, to this end, prosecuted its cross appeal, although I believe that the statute, properly construed, renders that formality unnecessary.

But, before discussing the proposition that the decree should be reversed *in toto* and the petition dismissed, I shall give my reasons for holding that, if by the most remote possibility the claimants are entitled to any relief whatever, the decree below gave them all that, in any view, they could even plausibly claim.

I.

Melgares, on presentation of the petition, merely gave a permissive right of temporary possession, or at most a provisional or incipient concession, of the lands described in the petition under the "limits" of boundary therein specified, of which the easterly one was the Estancia Spring. For some reason he refused to make or attempt to make an absolute grant in the first instance; nor had he any power to make such a grant. On the contrary, he was cautiously explicit in declaring that although the appointed alcalde mayor should induct the petitioner, Bartolomé Baca, into the precise lands for which he asked, and should point out the very boundary calls intended by the petition (*señalando límites*) and ascertain that the

lands were free from prior rights, yet he should thereupon make to the governor ("this superior officer") a preliminary report, "so that, if it be approved, the corresponding *testimonio* may be ordered to be given to the petitioner."

Now, even if it be assumed that the governor had at that time full authority to make a complete grant, it is plain that, by the very terms of this incipient concession, he reserved the exercise of that authority until after the making and due consideration of the alcalde's report. It is impossible to read these papers—the petition, the incipient concession, and the report—without being convinced that they form the "*expediente*," or roll of original official instruments involved in the proceeding, and that these original papers were appropriate to *official* custody only. It stands to reason that they were all part of the public archives held by Government officials on a public trust, and could never have been lawfully passed to private hands for private use. They are in no sense a *testimonio*. They were never intended by the governor or the petitioner to be turned over from the proper official control to the personal control of the interested private citizen. Indeed, the express terms of the incipient concession itself import that it went directly into the official custody of the alcalde mayor as his authority to perform the duties thereby enjoined, and that it was a part of those duties for the alcalde himself to "transmit" both the incipient concession and his report thereunder to the governor. The alcalde made this report, and, pursuant to his official duty, he returned the *expediente*, composed

of the petition, the incipient concession, and the report, to the governor. Thus, having the *expediente* before him—important papers pertaining to his office and which ought to be duly kept as royal archives—the next duty of the governor was to consider them with a view to determining whether or not to make to the petitioner a concession or grant in fee, if he had the power, or otherwise to refer the matter to the comandante-general. On no theory can it be reasonably contended that it was in the contemplation of either the governor or the petitioner to surrender these original papers, whether the report was approved or disapproved, to the private custody of Bartolomé Baca.

Upon consideration of the proceedings, at this stage of their progress, the governor would naturally either approve or disapprove the report *in toto*, or else make some other order on the subject. We are kept in total ignorance as to what written comment the governor made. He certainly wrote several words at the foot of the report and subscribed what he wrote, but of these words all that remain on the paper are “*d los límites por*”—“*d the limits by*” (or “*for*”).

An examination of the *expediente* will show that the first remaining word of Melgares's indorsement was not the preposition “*de*,” but some word ending in the letter “*d*.”

But these words were written on a public archive, not on a paper intended for private use or custody. Shall we assume that if the absent words were now present they would show an *approval* of the report? Shall we

assume that the governor, notwithstanding his Spanish pride of office, found no fault with the unwarranted assumption of authority by which the alcalde undertook, in excess of his delegated power, to put the petitioner in possession of *several hundred thousand acres* in excess of what he had solicited by his petition—the vast tract lying between the Estancia Spring and the Pedernal Hills—and complacently approved this official outrage on the part of a subordinate? Or shall we presume that the governor disapproved the proceedings of the alcalde for their manifest irregularity and even lack of jurisdiction?

When an analogous doubt arises respecting a royal grant, or even a Congressional grant, it is resolved in favor of the Government. (*Slidell v. Grandjean*, 111 U. S., 412-437; *United States v. Oregon, etc., Ry.*, 164 U. S., 526.)

So far from contemplating the surrender of the original *expediente* to private hands, the governor stated explicitly that in case of *approval* of the alcalde's report the next proceeding would be his *order* for the issue to the petitioner of the "corresponding *testimonio*." Here we have neither order nor *testimonio*. Since Bartolomé Baía was a man of extraordinary prominence and ability—deeply versed in the political affairs of the province—who soon succeeded to the executive functions of Melgares, so far as they continued after Mexican independence, it is impossible that, if Melgares had approved the alcalde's report and *ordered* "the corresponding *testimonio*" to be given, he, the interested applicant, warmed up by the

natural feeling of a favored grantee of a very large estate, should not have immediately demanded his *testimonio*, and should not thereafter have preserved it with due care as an important muniment of his title, and should not, under its sanction, have kept the property free from adverse or inconsistent entry, and should not, finally, have included the granted estate in his testamentary inventory.

II.

If Bartolomé Baena ever came lawfully into possession of the *expediente*—the original papers—after Melgares, upon their transmission to him by the alcalde, had made his note (now mutilated) at the foot of the report, it could only be upon some ground consistent with the integrity of Melgares's official conduct. The only supposable ground is that Melgares, in view of the redistribution or other modification in the nineteenth century of the old provincial granting powers, had become distrustful of his own jurisdiction, and had referred the incipient grantee, together with the incomplete *expediente*, to the comandante-general at Durango for final proceedings in the premises.

Certainly Melgares could never have given or intended to give to Bartolomé Baena, to keep as personal chattels, papers appropriately belonging to the royal archives, and therefore, if he ever made Baena the custodian of the papers, it was under fiduciary conditions. If Baena ever had them, he held them, not by private right or dominion, but as the King's trustee, either *bona fide* or *ex malicio*.

And there are reasons why we may well assume that Melgares doubted his power to make a definitive grant of so large a tract.

I shall not question here the right of the ancient governors of New Mexico to make grants. They assumed such a power and the assumption was not much questioned until the early part of the present century. As late as August 4, 1805, Governor Real Alencaster took jurisdiction of the petition of Juan A. Garcia for the Bracito tract (claim No. 6), but postponed action until the better settlement of the country in the vicinity of that tract. Afterwards—in 1820—the same petitioner renewed his application before Governor Melgares, whereupon the latter, on the 28th of August, 1820, signed the following decree, viz:

His Excellency Don Joaquin del Real Alencaster, governor of this province, in a decree of the 4th of August, 1805, conditionally refused to grant the request of the petitioner, and now this Government not having (as it believes) as much authority as that chief, although it is convinced by its topographical knowledge that the resettlement be made, has resolved that the party interested apply to the *proper source*.—Melgares. (Bracito Grant; Ex. Doc., H. R., Twenty-sixth Cong., first sess., Report No. 321, p. 53.)

Thereupon the petitioner applied to “the proper source”—the comandante-general at Durango.

It will be borne in mind that several times in the early part of the century the comandante-general had exercised his supervisory or final power in matters pertaining to grants in New Mexico.

Vide correspondence between the comandante-general and the governor relating to San Marcos Springs, exhibited as Appendix No. 4 of Mr. Vroom's brief. Also the order of Nava relating to the reestablishment of Socorro, Cevilleta, and other towns. (Archive No. 1171.) Also the proclamation of Nemesio Salcedo of October 22, 1807, for promulgation in certain provinces, including New Mexico, of the royal order of February 14, 1805, restricting the area of grants and limiting the powers of local officers to dispose of land except upon pecuniary considerations. (Reynolds, 77.) Also the Los Trigos or Donacion Vigil grant of 1814 and 1815. (Ex. Doc., H. R., Thirty-sixth Congress, first session, Report 321, p. 105; translation of it, p. 109.)

From the order of Governor Manrique, dated May 26, 1814, it appears that in the preceding year he had "transmitted to the superiority of the general commandant" the original petition for the grant, and resumed jurisdiction in 1814 only because of the recent promulgation by the viceroy of the decree of the Cortes of January 4, 1813.

There had been some interruption of the exercise of the old powers by the jurisdiction given to the provincial deputations and the ayuntamientos by the law of the Cortes of January 4, 1813, under the constitution of 1812; and, when that constitution was revoked in 1814 and the old régime restored (Hall, section 109), it may well be that more or less confusion attended the rehabilitation of old officials.

Upon the revocation of the constitution of 1812, the King restored the local powers of the old officials who

had remained loyal to the Crown, but left them under the same limitations which had been imposed up to the date of that constitution.

III.

But for the demonstration of the present proposition it is not material to determine what were the ultimate limits of Melgares's powers in 1819 concerning the concession of land titles, because it is evident that he did not, in Bartolomé Baca's case, go beyond the incipient steps. Therefore, the title, if there was any at all, was simply "incipient," "inchoate," "equitable."

If Melgares looked to the comandante-general as the final authority to make the grant requested, and so referred Baca to that official, instead of assuming to make a definitive grant himself, the case is analogous to those of incipient concessions made by the lieutenant-governors and other subordinates in Louisiana and Florida, which, when not completed by the superior authority, e. g., that of the *Intendente* or *Governor-General*, were always treated as merely "equitable." (*Delassus v. United States*, 9 Peters, 116; *United States v. Kingsley*, 12 Peters, 476 (483-5); *United States v. Wiggins*, 14 Peters, 334 (348); *Menards Heirs v. Masscy*, 8 How., 305; *United States v. Boisdore*, 11 How., 87; *Glenn v. United States*, 13 How., 250.)

On the same principle the concession, if it was not revoked, remained merely incipient and equitable, even if Melgares had the power to complete it, because he never undertook to do so.

IV.

While instances may possibly be found of grants attempted to be made definitively in the first instance, with instructions to the juridical officer to give a *testimonio* to the grantee "to serve as title," most of the concessions under both Spain and Mexico were inchoate and incipient only, and for their completion as "grants," or consummate titles, further action of the granting authority was necessary. In cases, if any there are, of the former class, the definitive title would remain of record in the granting office, and the *testimonio* delivered to the grantee would remain his private muniment of title. In the other cases—that is, in ordinary cases—the original papers—the petition and concession—were not immediately filed or recorded in the granting office, but were intrusted to the temporary official custody of the officer who was directed to make the preliminary investigation or "survey" of the land affected and deliver provisional possession.

Sometimes, perhaps because of the remoteness of the proper alcalde from the capital, the incipient original papers were put into the hands of the grantee, in order that he might deliver them to the alcalde. It was the duty of the latter, after making the investigation or "survey" and delivering provisional possession, to make a statement in writing of his proceedings, this statement being the "act of juridical possession," and being in official custody of all the instruments of inchoate title—called the *expediente*—to transmit that *expediente* to the granting office for further proceedings. Appropriately, the alcalde ought to transmit the *expediente* personally or

directly, but frequently, for the sake of convenience, the alcalde intrusted the *expediente* to the grantee, who became thus burdened with the duty of returning the originals—the *expediente*—to the governor. It is quite plain that in such cases it was never intended that the original papers should pass from the alcalde to the grantee except on a trust for their due transmission, nor that while they were thus in the grantee's fiduciary custody he could with impunity violate his trust by secreting them or otherwise withholding them from the royal archives out of which they had been permitted to go for a purpose merely temporary, thus leaving the Government without any record whatever of the inchoate transaction.

Since, as I have shown, Bartolomé Baca could not, as a private citizen, have lawful custody of the original papers (or *expediente*) of the concession, unless for the purpose of transmitting them to the comandante general at Durango, he was, while he held them, if we assume his good faith, in precisely the same predicament as the private holders of incipient concessions in Louisiana or Florida, on whom devolved the duty of taking the muniments of their inchoate titles to the final granting authority, whether king, governor, intendente, comandante, or audiencia, for their perfection and completion.

The regulations of Morales, cited in *Menard's Heirs v. Massey* (8 How., 293, at pages 306 and 307), merely declare the rules and principles which obtained in all jurisdictions wherein incipient Spanish grants were made:

The necessity of a further title than a mere loose order of survey, given by commandants of posts

and lieutenant-governors, and placed in the hands of the interested party, is too manifest for comment.

Petitions were written by the party asking the land, or someone for him; the governor consented, usually by indorsement on the petition, and ordered that the petitioner should have the land, and directed that it should be surveyed; the paper was handed to the petitioner, who might deliver it to the surveyor, or omit it; if he presented it and the land was laid off, then it was the surveyor's duty to record both the concession and the plat, together with a *proeds verbal*. But this did not make the party owner; without the further act of the King's deputy—the intendant general—the title still continued in the Crown.

Unfortunately for the claimants, the alleged precedent of the delivery of the original *expediente* of a concession to the grantee in the Galvan ranch, or Ignacio Sanchez Vegara grant, has no basis in fact, since that pretended title is a forgery. (Mr. Vroom's brief, p. 78.)

V.

It thus clearly appears that Bartolomé Baca could at no time even pretend to have received from Melgares anything superior in degree to an incipient, inchoate, equitable, and consequently imperfect and incomplete title.

Second.

Notwithstanding that the first order, or "order of survey," signed by Melgares may have imported an incipient concession, and contemplated a right of temporary possession of the lands specified in the petition under the exact

boundaries therein described—but of no larger area—no equity in favor of Baca arose against either Mexico or the United States.

I.

The temporary possession given by the alcalde was nonconformable to the concession, and was excessive and even fraudulent. (*Pinkerton v. Ledoux*, 129 U. S., 346 (354).)

II.

To create an equity sufficient to bind Mexico, or afterwards the United States, to complete the incipient concession, it was necessary for Bartolomé Baca to act in good faith both in regard to the original papers—if they were ever in his hands—and in regard to the subject-matter involved. If the original *expediente* got into his hands by any means, he should, with reasonable diligence, have either transmitted the same to the *comandante general* or returned it to the governor, instead of fraudulently converting it to his own use. And, as to the land itself, if he was in any sense the honest occupant of it as equitable owner, he was bound to fulfill, with diligence, all the conditions specified in the concession, such as inhabitancy, the construction of reservoirs, etc.

In *United States v. Kingsley* (12 Pet., 476), it was said at page 485:

These Florida grants or concessions of land upon condition have been repeatedly confirmed by this court, and it will apply the principles of its adjudications to all cases of a like kind. It will, as it has

done, liberally construe a performance of conditions precedent or subsequent in such grants. It has not, nor will it apply, in the construction of such conditions, in such cases, the rules of the common law. But this court can not say a condition wholly unperformed, without strong proof of sufficient cause to prevent it, does not defeat all right of property in land, under such a decree as the appellee in this case makes the foundation of his claim.

[The opinion then proceeds to distinguish ordinary cases from that of Arredondo by saying: "Arredondo's grant, confirmed by this court (6 Pet., 691), was a clear case of a grant in fee for past services and commendable loyalty to his sovereign, with a condition subsequent, of a nature the performance of which must have been a matter of indifference as well to the King of Spain as to the United States, after a cession of Florida was made."]

III.

I have never, in thought or argument, undervalued a serious, open, exclusive, actual possession, anciently begun and consistently continued under fair color of title, but the present case presents nothing analogous to such a possession. What stands out conspicuous is the lack of exclusive possession and confident dominion on Baca's part, and the presence of repeated inconsistent entries under Mexican officials upon the notorious and uncontested claim that the land was vacant and unappropriated public domain—entries and sovereign claim beginning during Baca's lifetime, while he was prominent in official station, and continued at intervals until the American occupation.

It is absurd to contend that any formal procedure of forfeiture was ever necessary to entitle a sovereign to take official notice that incipient proceedings toward a grant of public land had been suspended or abandoned, and accordingly, ignoring such futile proceedings, to regrant the same property. (*United States v. Repentigny*, 5 Wall., 211 (267); *McMicken v. United States*, 97 U. S., 204 (218).)

Inchoate titles, so weak and imperfect in character, could not be made definitive and perfect except by express sanction of the sovereign authority concerned, or else by a like sanction implied from an undisturbed ancient possession and claim.

The sovereign refusal to complete and perfect an inchoate claim might be evinced in any one of many ways. It might appear from a disapproval written on the original, incipient concession, as may well be assumed to have happened in the present case, or it might appear from any subsequent sovereign act inconsistent with the pretended inchoate claim.

The evidence, as well as the archives, discloses the election of the Mexican officials, the political chiefs and governors, territorial deputations, ayuntamientos, alcaldes, and others, to treat the land described in Baca's petition as part of the vacant, unappropriated domain of Mexico. If Baca ever entered on the land as an equitable claimant, he was ousted by the reentry of the Government. In truth, he abandoned all pretense of title or of right of possession. His heirs continued acquiescent in this abandonment of possession or claim. All this sufficiently appears from the terms of the subsequent grants of Nerio

Antonio Montoya (1831), Rec., p. 91-92; the Tajique (1834), Rec., p. 96-98; the Chilili (1841), Rec., p. 99-100; and Antonio Sandoval (1845), Rec., p. 88-90, already sufficiently discussed.

One sovereign reentry on the tract, in conflict with the theory that it was private property, was a denial and disavowal of the entire pretense of a title in Baca now resurrected by its comparatively recent purchasers.

IV.

It is idle to contend that the mutilated *expediente* was ever issued to Bartolomé Baca as a *testimonio*. A *testimonio* proper would be countersigned by the Secretary of State. The papers presented are undoubtedly the very originals themselves. They bear on their face internal evidence that they pertained to the royal archives and that in case a grant should be definitively made after approval of the alcalde's report it should be evidenced to Baca by "the corresponding *testimonio*" to be issued to him. The *testimonio* contemplated was a secondary instrument, to be duly formulated as a new thing "*corresponding*" to the original *expediente*. If "the corresponding *testimonio*" had ever been issued it would have been preserved by Baca and his heirs with ordinary care and produced in evidence. But no such *testimonio* was produced, and none could be, since none ever existed. Had one ever been issued, the land affected would have been Baca's most valuable asset, duly protected by him and duly noted in his last will in the same category with his other assets.

The mutilation of the *expediente* was made either by the King's authority before it came into the possession of Baena or his heirs or it was fraudulently made afterwards by him or them. On the first hypothesis the mutilation imports the sovereign disavowal and cancellation of the concession. On the second hypothesis the mutilation imports a spoliation by the parties in interest. In either case, nothing can be claimed under the *expediente*.

Finally, the claimants show the *expediente* in improper and suspicious custody, and they render no account whatever to explain away the resulting imputation of fraud. On their own showing, they are not entitled to these archive papers.

In an action of replevin, or under a search warrant, or in a proper chancery proceeding, the claimants would be compelled to surrender these public papers to public custody. If, as claimed, the archives of the Government were despoiled and fraudulently sold or given to private persons in 1837 or 1870, the presumption is that the *expediente* now produced was thus diverted from the sovereign custody. Appearances indicate that the concession was canceled by mutilation of the last signature of Melgares and the clause next preceding. The claimants are estopped from saying that they or their privies fraudulently or negligently made the mutilation themselves.

Third.

The foregoing argument has been made with a view of showing the claimants to be absolutely without title, perfect or imperfect (legal or equitable).

Admitting that the indorsement by Melgares was an approval, still that approval should have been followed by the delivery of a formal *testimonio*; the definitive title did not pass at this stage of the proceedings. It remained for some higher authority to examine into the matter and by concurrence pass the definitive title and authorize the proper *testimonio* to be given as evidence thereof, and also require a proper record to be made.

An examination of the laws of the Indies and the ordinances promulgated by royal authority from time to time will, I think, lead to the conclusion suggested. (Hall's Mexican Law, 1-9; Historical Sketch, Reynolds, 25; 2 White, 24 to 57; Royal Cedula, October 15, 1754; Reynolds, 50, see see, 9, p. 54; Royal Cedula, March 23, 1798, and proceeding thereunder, Reynolds, 65 to 78.)

The laws of the Indies, so far as they relate to the disposition of lands to individuals, were a revision of all former laws upon that subject. This cedula required all grants to be confirmed before the right of the King to intervene at any time to annul or modify was foreclosed. (See see, 9, Reynolds, 54.)

Counsel for claimants reach the conclusion "that the law of 1754 was the source of authority for the governor of New Mexico to make a land grant in 1819." (Appellant's brief, p. 9.)

If this be correct, which I very much doubt, the confirmation by superior authority was necessary before a definitive title could pass. The provisions of this law were as mandatory as similar provisions contained in the laws of the Indies relating to pueblo grants. Mr. Justice White, for the court, in the case of *The United*

States v. Santa Fe, 165 U. S., 675, 688, upon this requirement, said:

It may well also be implied from the provisions in the Recopilacion that the right of a town to hold land for public purposes was required to be evidenced by a grant from the viceroy or governor, and that such grant, when made, required confirmation by the crown. Thus, law 1, title 13, book 4, of the Recopilacion (2 White, New Recop., p. 55), is as follows:

"The viceroys and governors, being thereto authorized, shall lay out for each town or village which shall be newly founded and peopled the lands and lots which they may want, and the same shall be granted to them as reservations [propios] without prejudice to third persons. They shall transmit to us information of what they shall have laid out, that we may order the same to be confirmed."

Whilst it may be that the necessity for confirmation was dispensed with at some date, much later than the establishment of Santa Fé, there is no question that this provision was in force at the time when it is claimed that the settlement came into existence as a Spanish town.

The theory, then, of the vesting by operation of law in every Spanish town at the time of its organization of a title to 4 square leagues of land finds no support in the text of the Spanish laws, and is repugnant to their general tenor, as it is in direct conflict with mandatory provisions of that law, exacting a grant and its confirmation.

If it has been shown to the satisfaction of the court that Acting Governor Melgares made the grant (concession) and approved the boundaries as defined by the

alcalde, and the grantee was placed in possession, under the law of 1754 it was but a concession, and required confirmation by superior authority before the definitive title could pass to the grantee.

It may be true the title at this stage of the proceeding was valid, but graded as imperfect or inchoate, and subject to the restriction of the seventh subdivision of section 13 of the act creating the Court of Private Land Claims.

Section 12 of the cedula of October 15, 1754 (Reynolds, 55), provides:

In provinces remote from the Audiencias, or where the sea is between, such as Caracas, Havana, Cartagena, Buenos Ayres, Panama, Yucatan, Cumana, Margarita, Puerto Rico, and others in like circumstances, confirmations shall be made by their governors, with the approval of the royal officers and Acting Attorney-General, where there is one, etc.

It has been contended that New Mexico should be classed with the provinces named under the clause "others in like circumstances." It was not named, and can only come within this clause by implication.

I shall not go into this, as Melgares was only acting governor, only a subdelegate, and did not pretend to possess vice-regal authority. He was bound by the laws and regulations in existence at the time, which I shall attempt at this point to examine.

The absence of a *testimonio*, as well as of any order for its issue, the lack of proof of an approval of the alcalde's report, the secret and unlawful retention in private hands of the original *expediente*, the mutilation

of that *expediente* in an essential and vital part, the excessive area claimed by virtue of the unauthorized act of the alcalde, the failure of proof as to long-continued, open, and exclusive possession and claim upon which plausibly to support a title by presumption, and the affirmative, uncontradicted proof of adverse entries on the land, with sanction of all the local authorities of the Government from time to time during a period of nearly thirty years subsequent to 1819, under open, public, formal, and even solemn assertions that the land was "vacant," "unoccupied," in a "condition of mortmain," all ought to be enough to condemn the present claim in every part, without any resort to the further argument that Melgares lacked the power to make so extensive a concession as that now under consideration.

Nevertheless, I shall briefly state some additional reasons for believing that, however broad the ancient granting powers attributable to Spanish provincial governors in the centuries anterior to the current century, a change occurred in the royal policy in the period which began about the time of the French Revolution, and continued until the separation of Mexico from Spain, and that, because of this change of policy, Melgares, who was only an "acting governor," and held no commission directly from the King, and was therefore not a delegate, but only a subdelegate, very much distrusted his granting authority, at least so far as the making of large concessions was concerned, and, although he undertook to make some grants, generally of moderate extent, he frequently manifested great timidity on the subject, and

showed by his written declarations and his conduct that, in relation to important titles at least, he did not presume to act definitively. Indeed, it is plain that he looked to the comandante general as the superior authority in order to confer an unquestionable title to large tracts of Crown land.

The court will notice that in the case of the Bracito grant a petition therefor was presented in 1805 to Don Joaquin del Real Alencaster, who, "in a decree of the 4th of August, 1805, conditionally refused to grant the request of the petitioner," and that afterwards, in the year 1820, the application was renewed before Governor Melgares, and that official, by his decree of August 28, 1820, declaring his belief that he did not have "as much authority as that chief" (Alencaster), ordered "that the party interested apply to the proper source." The "proper source" referred to was the comandante-general, and accordingly the petitioner went before that high representative of the King, who thereupon, as of course, assumed jurisdiction of the case. The result was that the grant was finally made through the intervention of the lieutenant-governor at El Paso. (*Ibid.*, Bracito grant.)

We find that the comandante-general, at the very beginning of this century, commenced most seriously and effectually to assert his authority over lands in the province of New Mexico.

On the 18th of January, 1800, Don Pedro de Nava, comandante-general, gave explicit orders to the governor of New Mexico for the reestablishment in that province of the towns of Socorro, Cevilleta, etc. (*Vide*

Exhibit, Archive No. 1171; Mr. Vroom's Brief, Appendix No. 4.)

The royal cedula of March 23, 1798 (Reynolds, p. 65), indicates that much prejudice to small owners had resulted from the provisions of article 81 of the Ordinance of Intendants requiring their incipient titles to be transmitted to the superior board for confirmation, because the difficulties and delays of such transmittals were too expensive and onerous, and that accordingly grantees were excused from seeking such confirmations, provided they made to designated authorities certain pecuniary payments. The language of this royal cedula seems to imply (*Ibid.*, p. 67) that it was only in the case of lands of small value that the granting proceedings could be completed before local officers. Whether or not this cedula extended to New Mexico, it is important as showing the adoption of a restrictive policy in the making of grants.

The cedula of March 23, 1798 (Reynolds, p. 65), was followed by the very important cedula of February 14, 1805 (*ibid.*, p. 68), which, as I shall show, was duly promulgated in New Mexico in 1808. In this cedula the King recites the enormous abuses of the granting powers by some of his delegates in New Spain, and proceeds to impose restrictions on the local granting authority. Although the chief mischief against which the King sought to guard by the cedula of 1805 was the wasteful disposition of the valuable lands in the fertile districts of Mexico, leading to a dangerous land monopoly, it is plain from its terms that its scope and policy extended to all the provinces, rich and poor. Two points stand out, namely, first, that the King insisted on the demand and

receipt of a stated price before a complete title could be issued, and, second, that the King restricted the size of such grants to an area embracing comparatively few square leagues—less than one-twentieth part of what the claimants in this case seek as representatives of Bartolomé Baca.

This cedula concludes (*ibid.*, 73) as follows:

And to facilitate to the vassals the benefit and cultivation of the same in conformity with my sovereign intentions, authorizing, as I do authorize, the governors of the internal provinces to admit denunciations indiscriminately, and to make sales of Crown lands in their respective districts, provided that they do not exceed the quota prescribed by the said superior board, and under the condition to make report to the same for its approval; and therefore, I order and direct that you communicate this provision to all whom it may concern, or publish it by proclamation in that Kingdom in order that it may reach all, with care that it be observed and obeyed in all its parts, such being my will, and of this my royal order note shall be taken in the general auditor's office of my said council.

It expressly approves a decree dated May 10, 1802, of the superior board of the royal treasury, composed of the viceroy and other high officials, but it seems (Reynolds, p. 76) that that board, in view of the "inconveniences" caused by the limitation established as to the number of *sitios* which might be adjudicated to one person," formulated May 13, 1804, a supplementary decree on the subject and caused the same to be transmitted September 16, 1804, for the royal approval. It will be noticed that the royal order of February 14, 1805, takes

no notice of this proposed supplementary decree (the purport of which is not known), and the viceroy delayed promulgation of that royal order for upward of two years, apparently in the expectation of receiving notice of the King's decision regarding the amendment thus suggested. Evidently the King did not approve the proposed change. Consequently the very restrictive order of February 14, 1805, was on July 27, 1807, ordered by the viceroy to be promulgated (Reynolds, p. 77):

And that this may reach the notice of all it shall be published by proclamation in this capital (Mexico), of which paper copies will be forwarded to the commandant-general of the internal provinces and the intendants and magistrates of the jurisdiction of this Government.

On October 22, 1807, Nemesio Salcedo, the comandante-general, made his order of promulgation (Reynolds, p. 77):

Let this proclamation be promulgated in the district of the provinces under my command, independent of the vice-royalty of Mexico, that it may be complied with, etc.

Conformably (Reynolds, p. 78) the royal order was, on March 9, 1808, duly promulgated in the jurisdiction of San Geronimo de Taos (New Mexico), and on March 21, 1808, in the jurisdiction of Santa Cruz de la Cañada (New Mexico).

In the pretended *expediente* of the Santissima Trinidad, or Galvan grant, the petitioner, in the year 1809, says, "conforming myself to the Royal Cedula of 14th of February, 1805, ordered published by proclamation."

Can there be any doubt that, when a few years after 1819 the Government of Mexico displaced that of Spain, in New Mexico and the other Mexican provinces, the large tract now in controversy was under public dominion? Is not this conceded by the conduct and acquiescence of Bartolomé Baca and his heirs? Is not this proved by the assertion of public title by the Mexican authorities? It is idle for the claimants to invoke the rules of prescription and presumption. Those rules are intended to quiet long-continued claims accompanied with possession—not to aid stale demands against present adverse possessions. Every grant made by the Mexican authorities of parcels of the tract, under the public claim that the same was vacant public domain, was an interruption and denial of all inconsistent pretensions. This is true whether these grants were made in strict conformity with law or otherwise. The interruptions which break the continuity of an adverse possession may be altogether wrongful, but they are nevertheless operative as interruptions. Therefore, it is not incumbent on the Government to assert the validity of any of these subsequent grants. Those interested in maintaining them might, however, cite the confirmation by Congress of similar grants, such as the Maxwell (121 U. S., 325) and Sangre de Cristo (*Tameling v. U. S. Freehold, etc., Co.*, 93 U. S., 644), with as much propriety as the present claimants cite such confirmation of a few of the grants made by Melgares.

In conclusion, I insist that the decree should be absolutely reversed and the petition dismissed. The claim is even less meritorious than that of Repetigny (5 Wall., 211).

It is evident that the actual improvements mentioned by some of the witnesses took place at the little settlements which, without opposition by Baca or his heirs, were the subject of the subsequent grants made by the Mexican authorities—on the open, public claim that the land was unappropriated public domain. At the date of the pretended concession the royal order of February 14, 1805, then extant, required pecuniary payment to be made for the acquisition of large tracts, and no suggestion of any pecuniary consideration is made in the petition or provisional concession. The production from an old trunk in private hands of a mutilated original *expediente*, seventy-five years after its date, so far from showing title to the land now claimed, merely proves a violated trust or an unlawful diversion from the public archives of public papers. The suspicion which attaches to both the mutilation and the custody is in no way relieved by explanatory proof, direct or circumstantial. Since it would be contrary to law to deliver the *expediente* to a private citizen, except in trust to transmit it to the comandante-general, and since on this hypothesis that *expediente* was wrongfully diverted from that trust and converted by those under whom the claimants seek a confirmation of title, they are now in the attitude of suitors in chancery coming into court with unclean hands. Every presumption of law and equity is against them, and they should not be heard when they ask a vast estate upon grounds so weak and so unworthy of confidence.

Mr. Vroom cites in his brief, page 78, an indorsement of approval and order for the delivery of the original

expediente to the grantee as evidence of title of what is known as the Santissima Trinidad, or Rancho de Galvan tract. The validity of this grant is involved in case No. 43, *Leticio Sandoral et al. v. United States*, the transcript of which has not been printed, and which was passed under the twenty-sixth rule.

In the court below one of the defenses made by the Government was that the indorsement of approval relied upon by counsel in this case was a forgery, and the court so held. The signature of Governor Manrique to that indorsement was clearly shown to be a forgery, as will appear by the testimony of Mr. Key and Mr. Palen in that case and by the indorsement. This indorsement will be found at page 18 of the transcript now on file in the clerk's office. Mr. Catron, counsel for appellant, assisted me in the trial of that case.

Replying further to brief of counsel recently filed, I shall not discuss as the first point raising the question as to whether or not the seventh subdivision of section 13 is in violation of the Constitution and in violation of the treaty; for the right of the political branch of the Government to violate a treaty or to abrogate it has always been recognized by the judicial branch of this Government. In delegating to the judicial branch of the Government *quasi* political functions, Congress has the right to limit and restrict the powers of the judiciary in enforcing rights claimed under a treaty.

As to the second proposition, counsel contends that treaties as part of the fundamental law, are superior to adverse legislation in so far at least as rights vested under

them are concerned, and they are therefore superior to adverse legislation.

Counsel errs in supposing that the treaty conveyed any rights to private individuals. It was only agreed thereby to recognize and protect such as existed, and this obligation was purely executory in its character. The manner in which and the time when these rights were to be recognized was left exclusively to the political branch of the Government.

It has been held by this court since the organization of the Government to the present time that a treaty as the law of the land may be abrogated or modified by legislation of Congress either directly, or by implication from a conflict between the provisions of subsequent legislation and those of the treaty. (The Cherokee Tobacco Case, 11 Wall., 616; Head Money Cases, 112 U. S., 580.)

I do not feel this case should be submitted without some reference to the supposed leading cases cited and quoted from extensively by counsel for claimants, and content myself with the observations of Judge Sluss in a dissenting opinion in the case of *Montoya v. United States* (No. 272, C. P. L. C.).

This grant was made in 1766-67 by Governor Cochin-pin. Suit was instituted by Garcia to confirm the same, claiming under Montoya by mesne conveyances. Upon the trial, one of the deeds was discovered to be a forgery, and the suit was dismissed.

More than two years after the taking effect of the act creating the Court of Private Land Claims, the heirs of

the original grantees filed their petition for confirmation. The Government interposed the defense that under the twelfth section of said act the claim was barred. This raised the question as to whether the grant was perfect or imperfect. The court below held that this section applied only to imperfect grants, and it became necessary to determine that question. A majority held the claim to be perfect and confirmed the same. Judge Sluss dissented for the reasons given in his opinion, printed as an appendix to the Government's brief in the case of the *Rio Arriba Land and Cattle Company, Limited, v. The United States*, No. 195, now under advisement by this court, to which I respectfully refer.

Respectfully submitted,

HOLMES CONRAD,

Solicitor-General.

MATTHEW G. REYNOLDS,

Special Assistant to the Attorney-General.



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BERGERE v. UNITED STATES.

UNITED STATES v. BERGERE.

APPEALS FROM THE COURT OF PRIVATE LAND CLAIMS.

Nos. 43, 46. Argued April 19, 1897. — Decided October 18, 1897.

On a petition to the governor of the province of New Mexico, in 1819, for a grant of public land, made by a resident in that province, the governor directed possession to be given by the alcalde, and the expediente to be transmitted by that officer to the office of the governor, so that, if ap-

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proved by him, the proper testimonio might be ordered to be given to the petitioner. *Held,*

- (1) That no grant was made until return should be made by the alcalde, and that, until his action should be approved by the governor, it was without effect;
- (2) That as there was no evidence in this case, either in the papers presented in support of the petitioner's claim, or in the facts and circumstances proved, from which an approval could properly be presumed, the petitioner must be held to have failed in a material part of her case;
- (3) That in consequence of such failure, the petitioner was not entitled to judgment for eleven square leagues of the land claimed, under the 7th subdivision of § 13 of the act of March 3, 1891, c. 539, 26 Stat. 854, creating the Court of Private Land Claims.

THE case is stated in the opinion.

Mr. J. D. O'Bryan and *Mr. James W. Vroom* for Bergere and others. *Mr. T. B. Catron* was on their brief.

Mr. Matthew G. Reynolds for the United States. *Mr. Solicitor General Conrad* was on his brief.

MR. JUSTICE PECKHAM delivered the opinion of the court.

These are cross-appeals from a judgment of the Court of Private Land Claims, confirming in the petitioner Bergere, for herself and the other heirs of Manuel Antonio Otero and Miguel Antonio Otero, the title to eleven square leagues of land in the Territory of New Mexico. The petition was filed in the court below, asking that the validity of the title to a very much larger tract of land in the above territory, alleged to have been granted in 1819 to one Bartolomé Baca by acting Governor Melgares, might be confirmed to the heirs and legal representatives of Baca, of whom, she alleged, she was one.

The number of acres contained in the alleged grants was not stated, but it has been variously estimated at from half a million to a million and a half.

The judgment of confirmation was granted upon the ground, as stated by the court, that the grant to Baca was imperfect at the time of the cession of the department of New Mexico

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to the United States by the treaty of Guadalupe Hidalgo, and hence it could only be confirmed by the court for the amount of eleven square leagues, under the seventh subdivision of section thirteen of the act of Congress of March 3, 1891, c. 539, 26 Stat. 854, 860, creating the Court of Private Land Claims. That subdivision reads as follows:

"No confirmation in respect of any claims or lands mentioned in section six of this act, or in respect of any claim or title that was not complete and perfect at the time of the transfer of sovereignty to the United States as referred to in this act, shall in any case be made or patent issued for a greater quantity than eleven square leagues of land to or in the right of any one original grantee or claimant, or in the right of any one original grant to two or more persons jointly, nor for a greater quantity than was authorized by the respective laws of Spain or Mexico applicable to the claim."

The petitioner thought the court below should have confirmed her title to the whole of the land described in the alleged grant, while the counsel for the Government was of the opinion that the judgment ought not to have confirmed her title to any portion thereof. Both parties have therefore appealed from the judgment to this court.

In the course of the trial certain papers were put in evidence on the part of the petitioner, for the purpose of proving the alleged grant. They were written in the Spanish language, and a sworn translation thereof, also appearing in the record, reads as follows :

"To the Acting Governor:

"Don Bartolomé Baca, captain of the volunteer militia company of cavalry of the villa of Albuquerque, residing in the jurisdiction of Tome, before you with the greatest respect and subordination, as by law required, represents: That he has a number of sheep, horned cattle and horses, without legitimate property on which to keep them together under shepherds, cattle herders and horse herders, to take care of them and secure their safety, they now roving over different places, exposed to all the contingencies arising from their being

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scattered. There being vacant on the other side of the Abó Mountain a tract called the Torreon, and which extends, on the north, to the Monte del Cibolo; on the south to the Ojo del Cuervo; on the east to the springs called the Estancia Springs; on the west to the said Abó Mountain; he prays you to be pleased to grant the same in real possession, in the exercise of the powers upon you conferred by His Majesty, in order to establish thereon a permanent ranch or hacienda, which he engages to occupy with his stock, sustaining the same with armed servants, who may defend it against the incursions of the enemy without abandoning it; and he will also, if possible, open lands for cultivation, whether irrigable or dependent upon the seasons, for the advancement of agriculture, and although the water sources it contains are small and uncertain, he proposes to improve them with reservoirs and other appliances which will secure every advantage possible; and he affirms that it has at present no owner, and that it never has had any known owner.

"Wherefore, he prays you to be pleased to grant this his petition in conformity with law, and to direct the royal judge of his district to give him legal possession, with the proper documents and other formalities which are required, whereby he will receive favor, grace and justice. I swear that I do not act in bad faith, and in that which is necessary, etc.

"San Fernando, February 4, 1819.

"BARTOLOME BACA. [RUBRIC.]

"SANTA FÉ, July 2, 1819.

"As he asks it according to law, and I understand that no injury results to any third party, but, on the contrary, increase of stock raising and agriculture under the conditions asked:

"Don José García de la Mora will proceed to give the possession, designating limits and doing what is proper, which being concluded he will transmit the expediente to this superior office, so that if it be approved the proper testimonio may be ordered to be given to the petitioner.

"MELGARES. [RUBRIC.]

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"In execution of the decree of July 2, 1819, I, José Garcia de la Mora, the judge commissioned by Lieutenant Colonel Facundo Melgares, governor of the province of New Mexico, proceeded in company with captain of volunteer militia, Bartolomé Baca, who by his merits and conduct in the service of both majesties, as has been proved by the offices which have been conferred upon him of alcalde mayor, and in other services in the field, the governors always appointing him commander of campaigns and scouting parties, which he always led with honor and valor, and in addition to all this he has always surpassed others in voluntary contributions, setting a good example to his inferiors. Wherefore, in reward of all these merits and services I have proceeded in his company to examine the tract he applies for, and knowing that it is wild land, and that no injury results to any third party, I have placed him in possession in the name of the King (whom may God preserve), and I took him by the hand and led him over the whole tract, he shouting and plucking up grass and throwing stones in the name of the King, saying, 'Long live our beloved monarch, Don Fernando VII., whom God may preserve,' with hurrahs and shouts, and I shed tears of delight at his acclamations; and I designated to him for his boundaries: On the south, the Ojo del Cuervo, following its line to the Ojo del Chico; on the east, the Cerro del Pedernal; on the north, the Ojo del Cibolo; on the west, the Altura de la Sierra (summit of the mountain range); the said gentleman being satisfied and grateful to the said governor for the benefit conferred upon him, binding himself to increase by his intelligence the limited waters which have been donated to him in order that his herds may be maintained, to which he is bound, transmitting the whole for your approval, he will satisfy the fees which may be charged to him.

"Wherefore, I transmit this to the superior authority in order that, it being examined by you, you may decide as you may deem just.

"San Fernando, September 12, 1819. To which I certify with my two assisting witnesses.

"JOSÉ GARCIA DE LA MORA. [RUBRIC.]

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"Assisting witness:

"JOSÉ ANDRES CALLER. [RUBRIC.]

"Assisting witness:

"FRANCO GALIZ. [RUBRIC.]

"[Torn] the boundaries by [torn].

[RUBRIC.]

"[Torn] ELGARES."

The original of the last portion of the above paper, from the words "San Fernando," etc., reads in Spanish as follows:

"San Fernando, doce de sepre. de mil ochocientos diez y nueve años. De qe. doy fee, con los dos de mi asistencia.

"JOSÉ GARCIA DE LA MORA. [RUBRICA.]

"De assa.:

"JOSÉ ANDRES CALLER. [RUBRICA.]

"De assa.:

"FRANCO GALIZ. [RUBRICA.]

"[Roto.] de los limites por [Roto].

[RUBRICA.]

"[Roto.] ELGARES."

The petitioner claims that the evidence shows an approval by the governor of the action of the alcalde in delivering juridical possession of the land described in the petition of Baca, and that thereby the grant became effective and absolute. Also that there is sufficient evidence of an adverse possession of such land by Baca from 1819 to the time of his death in 1834 and after that time by his heirs and representatives.

The court below found the following facts:

"First. That on February 4, 1819, Bartolomé Baca presented a petition to the then governor of the province of New Mexico, Facundo Melgares, setting forth that he had registered a piece of vacant land which was called the Torreon; that the said governor made the said grant as petitioned for on July 2, 1819, and directed José Garcia de la Mora to give possession, designating the limits and officiating duly; that afterwards, to wit, on September 12, 1819, the

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said official gave to the said Bartolomé Baca the actual possession of the said tract of land, called the Torreon, petitioned for.

"Second. That the said tract of land, called the Torreon, had been in the actual possession of Bartolomé Baca for more than four years from the date of the grant on said September 12, 1819.

"Third. That the said petitioner, who filed her petition for herself and other heirs of Manuel Antonio Otero and Miguel Antonio Otero, are the legal successors in interest to the rights of the said heirs of the said Bartolomé Baca.

"The court finds as a matter of law that the grant to said Bartolomé Baca was imperfect at the time of the cession of the department of New Mexico to the United States of America by the treaty of Guadalupe Hidalgo, and that the petitioner for herself and other heirs of Manuel Antonio Otero and Miguel Antonio Otero, as the legal representatives of the said Bartolomé Baca, is entitled to a confirmation of eleven square leagues of land within the outboundaries of the tract of land, called the Torreon, granted to said Baca, and of which he was put in actual possession.

"It is therefore ordered, adjudged and decreed by this court that the claim of the petitioner for the land hereinbefore described and set out be, and the same is hereby, confirmed to the extent of eleven square leagues to the heirs and legal representatives of Bartolomé Baca, provided that this confirmation shall not confer any right or title to any gold, silver or quicksilver, mines or minerals of the same."

In regard to the character of the grant involved in this proceeding, it is conceded on the part of counsel for petitioner that the approval of the governor was necessary in order to make the grant effective. In their brief they say: "Now this grant was not finally made until return was made by the alcalde and approval had. Before that time it had no existence. The confirmation of the government was the one act that fixed the right of the grantee, and that final act was based upon the return and, necessarily in this case, in confirmation of the return."

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We have no doubt of the correctness of this view. The governor, in his reference of the case to the alcalde, bids him transmit the expediente to his office, *so that if approved* the proper testimonio may be ordered to be given the petitioner. Until approved, the action of the alcalde was of no effect.

The burden of showing this approval rested with the petitioner, and unless she has sustained it she has failed in this branch of her case.

In speaking of the burden cast upon a petitioner who asks confirmation of an alleged grant of land under the act of 1891, above referred to, this court, in *Whitney v. United States*, 167 U. S. 529, at page 547, said: "Upon the whole, we have come to the conclusion that the claimants have not made out their case by a fair preponderance of evidence or such weight of testimony as is necessary to establish their title to this large tract of land."

Counsel for the petitioner claim that, assuming the burden as above stated, there is a presumption, arising from an inspection of these papers and from a consideration of the other evidence in the case, that there was an approval of the action of the alcalde by the governor, and that the grant was thus made effective. We do not concur in this view, and we are of opinion that the papers themselves show no approval by the governor, and that there is no evidence of other facts or circumstances from which such approval could properly be presumed.

There is no approval to be found upon the papers themselves. This is too plain for argument. The torn portion of the paper following the report of the alcalde has no word of approval thereon. There is part of a sentence which, as translated, means "the boundaries by," and under it is the signature of Melgares, with the exception that the first letter of his name is lacking. This does not and cannot in and of itself constitute an approval in fact, and there must be something more than this torn paper upon which to found a presumption of such approval.

It is, however, urged that the presumption arises from an inspection of all the papers above referred to, aided by a consideration of the other evidence in the case.

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We think no such presumption can be indulged in from an inspection of all of the papers in question even when aided by the other evidence.

Such an inspection shows that the alcalde proceeded on his own account to deliver juridical possession of a much larger tract of land than Baca had petitioned for in his petition to the governor. This larger tract the alcalde described in his report to the governor, and submitted his action to the governor for his final approval.

The action of the alcalde is sufficient to prevent a presumption of approval founded solely on an inspection of the papers. The difference between the amount of the land asked for and that delivered by the alcalde is too great to permit of any presumption of approval. There must be some proof of it. We are not aided in making this presumption by a consideration of the other evidence.

Counsel for the petitioner refer to the fact of the possession of these papers by Baca as an important piece of evidence in aid of this presumption. The possession alluded to was proved by one of the grandsons of Baca, who was a witness for the petitioner. He testified that his mother was a daughter of Baca, and that his father was Baca's administrator. The papers of Baca were in the possession of his father as such administrator. His father died somewhere about 1880, and after his death the witness took the box of papers that had belonged, as he said, to his grandfather and kept it. He did not know its contents until he was looking for some papers belonging to his father, when he found what he describes as a part of the grant of a tract to Bartolomé Baca. Witness took the paper to Manuel Antonia Otero, who said: "Let us search for the other part, and I will buy it from you and the other heirs"; and then after a further search the other part was found, and these papers thus found are the ones above set forth.

Upon these facts it is said that it appears that the papers were in possession of Baca, and that they were delivered to him by or on behalf of the governor, and it therefore follows that the grant was approved by him, or otherwise the papers

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would not have been delivered. The bare fact of possession of the papers as above stated is all that the evidence shows. There is not one word of proof of any delivery of the papers to Baca, and we cannot see, from the mere fact of possession of the papers under these circumstances, sufficient ground upon which to base a presumption of delivery, and therefore of approval.

We are asked to presume the fact of delivery because the papers were found in the box of papers once belonging to Baca, and we are then further asked to presume an approval because of the presumed delivery. This requires an entirely too free use of presumptions unsupported by evidence tending in the direction of proof of the facts to be presumed. If the papers had contained an approval by the governor, it might perhaps have been admissible to presume a delivery from the fact of possession. It is too much to ask us to presume both facts from the sole fact of the possession of the papers. The other evidence in the case, viewed in connection with these facts, is wholly insufficient to permit of the presumption. It is directed only to the fact of possession of the land by Baca; the character and weight of which evidence will be spoken of hereafter. It is enough to say here that it is insufficient to be used as lending any strength to the presumption of approval which we are at present discussing.

In the condition in which the papers were found, some evidence further than mere possession of them should have been given. The papers were not found together or at the same time. They were torn, and part of the name of the governor had disappeared; they were not of a character to be probably found in the hands of Baca. The proof as to the manner in which Spanish grants were evidenced, as ascertained from an examination of the records in the surveyor general's office in the Territory, is unimportant. The witness was simply unable to give an opinion as to the general custom. Here, however, the papers themselves showed that something other than those papers was to be given the grantee. The papers formed the expediente and belonged in the archives of the government when approved, and they show on their face that

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if the government approved, there was to be given in that case a proper testimonio to the petitioner, which it was evidently contemplated should be something other than this expediente. There is no proof of the existence of any such paper or that it was ever given.

Under all these circumstances, some explanation as to the possession of these papers by Baca should have been given, showing they were intended as in place of the testimonio, so that the presumption of a delivery and an approval by reason thereof would not necessarily rest solely upon the fact that the papers without any approval endorsed on the return were found as stated.

Evidence of the delivery of juridical possession of the land to Baca is also referred to as aiding the presumption of the subsequent approval by the governor and the delivery of the papers to Baca, and the further alleged fact of the retention of such possession by Baca up to his death in 1834, is also mentioned for the purpose of strengthening this presumption. The alcalde in fact delivered to Baca juridical possession of much more land than was asked for by Baca in his petition. This fact is attempted to be explained upon the theory that the petition of Baca did not describe in detail the land he asked for, and that the governor in referring the petition to the alcalde directed him to designate the limits, and do what was proper, etc. There is, however, a sufficient description of the land contained in the petition of Baca. It was in regard to that particular land thus described that the acting governor said that "as he asks it according to law," etc., "Don Mora will proceed to give the possession, *designating the limits.*" Was this an authority to Don Mora to designate such limits as might seem good to him, or was it simply an authority to designate those limits which were described in the petition of Baca? We have no doubt it was the latter, and hence when the alcalde made return that he had delivered juridical possession of a much larger tract of land than had been asked for, it would naturally be supposed there might be hesitation and refusal to approve on the part of the governor. Certainly, no presumption of approval would arise from these

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facts. Therefore the delivery of juridical possession, as shown in this case, has not the usual importance that is attached thereto when such delivery takes place as the concluding act in a grant of an absolute character. This delivery was concededly conditional, and could have no final effect until the approval by the governor, and this approval must be shown by the petitioner to have been given, and cannot be presumed to follow the delivery of juridical possession.

Actual possession of the land described in the alleged grant for four years by Baca, as found by the court below, is also claimed as an important fact upon which, in addition to the evidence already alluded to, the presumption of approval may properly be sustained. The evidence upon which the finding is based is not substantially contradicted, and it shows that after the delivery of juridical possession by the alcalde, Baca built some small buildings on a portion of the land, for the use of his herders and servants, who occupied them, and who were attending to the business of looking after his horned cattle, sheep and horses, for which Baca wanted pasture. He never himself resided on the land, but subsequently to his taking possession from the alcalde and at different times prior to his death in 1834, other persons, embracing in all a number of families, had come upon Baca's portion of the land, and had dwelt there, without any molestation from him, and probably with his consent, on account of the protection their presence would afford to his interests against the Indians. During the years subsequent to the grant in question there were granted within the boundaries thereof small grants to settlements or towns, which the petitioner says were granted with the assent of Baca and his legal representatives. There is also evidence of some small attempts at cultivation within a narrow range of land contained in the grant, hardly enough to speak of. Some of the witnesses for the petitioner said the place was called Torreon because Baca built a torreon there, and the people gave it that name for that reason. The accuracy of this evidence becomes doubtful, to say the least, when, by referring to the original application of Baca to the acting governor for

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the grant, he describes it therein as "a vacant _____ tract called the Torreon, and which extends," etc., as described. Two of the sons of Baca occupied at one time a log house that was built by Baca upon the land, and they occupied it while superintending the herders who were caring for the cattle being pastured in the vicinity. Petitioner's witnesses also said that since 1819 and up to the death of Baca, he was recognized as the owner of the property, and after his death the property was recognized and respected as that of Baca.

Who were the persons thus recognizing ownership is not stated, whether servants and agents of Baca, or independent third persons. Some of the witnesses making these statements were wholly ignorant, as they said, of the fact that grants of portions of this land had been made by the Mexican government as vacant and unoccupied lands. Subsequently to the date of 1819 such conveyances were in fact made; and whether the title conveyed by them was good or bad, it appears conclusively that the Mexican government, during the time when this possession of Baca is claimed to have been in existence, regarded the tract as vacant and unoccupied so far as to permit of its conveyance to others of various portions of the land now claimed. Another witness thought that Baca occupied about three hundred varas in width from east to west and from north to south, but he was ignorant as to the boundaries of the grant, although so far as he knew Baca claimed no more than three hundred varas, and this was under some cultivation for a distance of about one hundred varas from north to south, and this was as late as 1829 or 1830. Other persons during this time came in and made application to the judge of first instance, as witness remembered, for other portions of land embraced in this alleged grant, on the theory that such portions were vacant and unoccupied.

This in substance is the evidence of possession, and it cannot, as we think, at all strengthen the presumption of an approval of the grant and a possession in accordance with it.

Nor do we think there is any evidence upon which to base a claim of adverse possession of this land as of right or under

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some claim of title. There is no evidence showing a possession exclusive in its nature and founded upon a claim of right to the land so possessed. If there had been evidence of an approval of the grant, the delivery of juridical possession, as stated in the return of the alcalde, might be sufficient evidence of title at one time to the whole land, yet, in the absence of such evidence of approval, we are of opinion that the actual possession, as proved, was totally insufficient to support a claim of title to this immense tract of land; nor is it sufficient to support a presumption that the acting governor did approve the grant and that what appears upon the torn expediente is in reality part of his written approval thereof. The recognition of the property as belonging to Baca was very probably a recognition of the occupancy by him of the three hundred varas above alluded to, and is surely not definite enough to base a claim that the possession of this large amount of land by Baca was either notorious or in any degree exclusive, or that any portion of it was ever used by him for any purpose other than the pasturing of his cattle, sheep and horses, and purposes connected therewith, but in no way exclusive of other persons.

In regard to proof of the fact of pasturing cattle as evidence of an adverse possession upon which to base a claim of title, we have held that such fact is of very slight weight when applied to cases arising under alleged grants of land of the nature of the one under consideration. In the case of *Whitney v. United States*, already above cited, 167 U. S. 529, 546, this court said, speaking through Mr. Justice Brown, as follows:

"The claimant also relies upon a long continued adverse possession of this land, maintained for nearly 170 years from the date of the grant, and nearly eighty years from the date of the *testimonio* issued by the alcalde mayor, de Baca. Had it been shown that this possession was complete, adverse and undisputed during the whole life of this grant, such possession would probably be regarded as complete evidence of title. Nor are we disposed to deny that the fact that the Luceros and their descendants pastured stock upon these lands is evidence of such possession, but in order to make it of any

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particular weight it should be shown to have been exclusive, and that no other person pastured or had the same right to pasture upon these lands. The proceedings in the case first above mentioned, of the intrusion of the Romeros, indicate the lands to have been held in common, and to have been subject to pasturage by the Indians and other residents of that neighborhood. Under such circumstances, it should be made to appear that the rights of Lucero and his descendants were exclusive in this particular. In addition to this, however, it is a fact so notorious that we may take judicial notice of it, that mere pasturage upon these western lands is very slight evidence of possession. The court below was of the opinion that 'from a practical standpoint the grazing of stock in this country has no value as evidence of practical location.' In view of the fact that all, or nearly all, of this testimony respecting possession is given by witnesses who are descended from Lucero, or connected with his family, or are interested in the litigation, and the possession relied upon is not shown to have been exclusive, or inconsistent with the use of this vast tract as a pasturage common to all the dwellers in that neighborhood, we think the court did not err in refusing to give it weight as evidence of title."

These remarks apply with great force to this case, so far as the evidence herein goes to show actual possession by reason of the pasturing of stock, which is really all the evidence of possession the case affords. It is entirely lacking in evidence of an *exclusive* possession under a claim of right, and the testimony is consistent with a mere occupancy of but a small portion of the land by Baca and his servants for purposes of pasturage, and without claim of further or exclusive right or title.

There is another fact that we think bears with a good deal of force upon the question whether there ever was an approval by the governor and, as connected therewith, whether Baca himself ever thought that he had or claimed to have any title to or property in the land described in his petition or in the report of the alcalde, and that fact is that he makes no mention whatever of this property in his will, and does not in

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that instrument claim to have any title to or interest in the same. The will was put in evidence only for the purpose of showing the written declarations of Baca as to his ownership of property and his omission to name the property in question, and we think it sufficiently proved for that purpose.

The failure to enumerate in his will a particular piece of property owned by a testator would, in ordinary cases, be of not the slightest significance. But a perusal of the will under examination shows, as we think quite plainly, that the testator was in effect marshalling his assets and mentioning in the instrument all his property and making specific dispositions thereof. He speaks in great detail of his different pieces of property, both real and personal. The paper cannot be read without giving the impression that the testator was naming therein every piece of real property which he claimed to own. A reading of the will is the most satisfactory and the best proof of the correctness of this statement, and the instrument, with the exception of the formal parts, is therefore given in full in the margin.¹

1 WILL OF BARTOLOMÉ BACA.

First, I commend my soul to God, our Lord, who from nothing created it, and my body to the earth from which it was made, which when a corpse, I direct be shrouded in the habit of our seraphic father, San Francisco, and to be buried in the church of the Pure and Spotless Concepcion de Tome.

It is my will that my burial be humble and with mass with the body present. I also declare that I am lawfully married, in *facie ecclesiae*, to Dona Maria de la Luz Chaves, from which marriage we have had and have, as our legitimate children, Maria Rita, Manuela Antonia, Maria Manuela, Juan, Manuel and Maria Lugarda. I also declare as my property the house where I live, containing seventeen serviceable and three unserviceable rooms, with a chapel where the holy sacrifice of private mass is celebrated, adorned with thirty-five images in sculpture and pictures, a pulpit, twenty-four mirrors, a censer with its boot of silver, five chasubles with their corresponding accessories, two capes, two albes, two sashes, six altar draperies, two missals, one chalice with its accessories, two cruets with their salvers, eight metal candlesticks, and its vestry with a chest in which the ornaments are kept. I also declare as my property the utensils of my house, consisting of eight mirrors, eleven silver plates, twelve spoons, and eight forks also of silver, three copper kettles, two large chests, four carts with trappings, five trunks, three hampers, one silver vase and a tankard of the same, one wardrobe, one carriage, four serviceable and three

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After reading the will the inference is, as we think, irresistible, that Baca did not suppose he owned, and made no claim to own, the property in question here. If he had owned it or

unserviceable wagons, one flask case with twelve flasks, eight hoes, three axes, two adzes, three bars of iron, two American saws, one thousand six hundred dollars in money, one copper boiler. I also declare as my property nine small houses in this place of San Fernando, four small houses at El Cerro, the farming land I have at this place and at El Cerro, with the purchase I have in this said sitio, which is coterminous with the sitio of Valencia. I also declare as my property a house I have in the sitio of the Peraltas, a broken field, and an interest in the

[Good for seal third for the years 1833 and '34. Rubric.]

said sitio. I also declare as my property a house and lands in the sitio of the Aragons, and interest in said sitio which I bought of the late José Aragon.

I also declare as my property a ranch which I bought of Don Luciano Garcia on the other side, in front of Bernalillo, which consists of a house and lands, the value of which is one thousand dollars, which I gave for it. I also declare as my property two ranches in the sitio of Tome, with its houses, which I purchased of José Manual Apodaca and Andres Mirabal, and two large fields purchased of Felipe Montoya. I also declare as my property two fields and an interest in the sitio of Las Enlamés, which I purchased of the late Antonio José Baca. I also declare as my property that which I have in a room in my house set apart as a store, and in which there are forty-five pieces of calico, domestic and muslin. I also declare as my property two houses I have in La Joya de Sevilleta, together with their share of lands in the sitio. I also declare as my property a house I have in the village of El Paso del Rio del Norte, with its vineyard and corresponding land, as appears from the document executed for me and which is in my possession. I also declare as my property the land I have in the sitio of Sansal, which Juan Antonio Baca paid me and which was received by Tomas Sanchez. I also declare as my property the broken lands I have in the sitio of Mansano and my interest therein, together with the will under the management of José Antonio Torres. I also declare as my property a mill I have in this place of San Fernando. I also declare as my property four hundred and fifty head of cattle from the brand up, seven thousand head of small stock, eight hundred ewes of mine which Don Francisco Ortiz has on shares, one thousand ewes which Gonzalez, who resides at Seboyeta, has on shares. I also declare as my property forty broken mules, a little more or less, twenty-four aparejos, with accessories, one hundred horses between unbroken and broken, twenty-four young mules one and two years old, two asses. I also declare th't Don Mateo Sandoval owes me

[Good for seal third for the years 1833 and '34. Rubric.]

four hundred and thirty dollars in money, which I order collected. I also

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claimed to own it, there can be no doubt it would have been mentioned in the will. A grant containing at the lowest estimate half a million acres of land would be much too large

declare that, according to the cash book in my use and the obligations that have been made to me, collections be made of all the individuals who owe me and are not credited on their accounts and obligations. I also declare that I owe the house of the late Francisco Chaves four thousand and odd dollars in money and five thousand ewes I had from said house on shares. I order that it be paid. I also declare that I owe as tithes at El Paso del Norte four thousand dollars. This is being paid, and what is found not to have been paid, I order that it be paid. I also declare that I owe to Don Santiago Arichavala for one thousand two hundred sheep. I order that they be paid for. I also declare that I owe Don Rafael Ortiz for six hundred sheep for the year eighteen hundred and thirty-four. I order that they be paid for. I also declare that I owe my stepson José Luna, for five hundred sheep. I also declare that Don Ricardo Ester owes me four thousand five hundred dollars. I order that it be collected. I also declare that Don Ignacio de la Campa, who lives in Sonora, owes me one thousand five hundred and fifty-six dollars, two reals. I order that it be collected. I also declare that Don Alejandro Legren owes me four hundred dollars, two hundred of which appear in an obligation he executed for me, and for the other two hundred he made no obligation. I order that it be collected. I also declare as my property a tract of land in the sitio of Lunas, which Antonio José Padilla paid me. I also declare that Ruybali de Savinal owes me for three hundred ewes. I order that it be collected. I also declare that Vicente Provencio, who resides at Oposura, in the State of Sonora, owes me five hundred dollars in money. I order that it be collected. I also declare that all the servants of my house, according to their accounts, are obligated to earn them in the house, even to the last real, and he who does not wish to serve shall pay in full. I also declare as my property forty she goats, which are in the possession of Gertrudis Montoya, who resides in Belen. I also declare as my property one iron cot and two bells.

[Good for seal third for the years 1833 and '34. Rubric.]

I also declare as my property a cross with its iron weather vane, which is used on the belfry. I also declare that I leave to my wife, Dona María de la Luz Chaves, my dwelling and all the household furniture within the doors thereof, it being observed that I have given houses to all my children; to Manuelita the house I have in Santa Fé, with its corresponding land, and to all the others I have also given houses in this place of San Fernando, with their respective lands. I also declare that I leave to my wife, María de la Luz Chaves, the land enclosed by a wall I have in this place and orchard.

In order to carry out all the wishes this will contains and which the codicil will contain, in case I leave one, I appoint as my executor, in the first place, my wife, María de la Luz Chaves; in the second, Don Jacinto Sanches,

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for the testator to have overlooked or ignored in a declaration of ownership of property such as is contained in this will.

We should infer from this omission that Baca knew he did not own the land and was aware of the fact that the action of the alcalde had never been approved by the governor.

From the fact of Baca's omission to name this land as his property we must infer that such actual possession as he had taken of a small portion of this land never led him to suppose that he was the owner of it or that he had any title to it.

It was in fact an occupation of a comparatively small piece of the land in question, for the purpose of pasturage, but in no way exclusive in its nature and under no claim of right or title. Hence the omission of Baca to mention the land as his property or to refer to it in any way.

The action of the Mexican government in making grants to third parties of certain portions of these lands, as vacant and unoccupied lands, is also of some importance. The grants were made at times which were long subsequent to the petition of Baca and the making of the return of the alcalde, and were made after an official examination of the lands then granted and a certificate that they were vacant.

We express no opinion as to the validity of these grants, and we allude to the subject only for the purpose of pointing out how the facts appeared to the Mexican officials, who, at

and in the third, Don Enrique Luna, and each one *in solidum*, and I give them ample power to take possession of my property as soon as I die and to pay all I owe, and that their collection be lawful and real, and that they make it with the legality their good conscience may indicate to them, which charge shall continue for the legal year and as much more time as they may need, since I extend it. And after it is completed and everything is paid, in the sale of my property, furniture, real property, rights and shares, present and future, I constitute as my sole and universal heirs my wife, Dona Maria de la Luz Chaves, and my said children, Maria Rita, Manuela Antonia, Maria Manuela, Juan Clemente, Manuel, and Maria Lugarda, who, after paying all I owe (except what I have given them), shall make a lump of what is left, the half for my said wife and the other half to be shared in equal parts by my children that they may enjoy it with the blessing of God and my own. And by these presents I revoke and cancel the wills and other testamentary provisions I may have made heretofore.

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that time, were engaged in an investigation of the question of occupancy, and who reported the lands mentioned in the respective grants as vacant and unoccupied, which we may assume they would scarcely have done had Baca or his heirs then been in the actual possession and occupation of those very lands.

We have now referred to the substance of all the evidence contained in this record and we are compelled to conclude that the petitioner has failed to make out a title of any kind to the land in question. While the court below failed to give judgment to the petitioner for the full amount of her claim, yet it did give her judgment for the amount already stated of eleven square leagues of land. The court found that the grant was an imperfect grant at the time of the cession of the territory to the United States.

In our view of the case no grant, perfect or imperfect, was in existence at that time, and hence the finding of the court that the petitioner was entitled to a confirmation of eleven square leagues within the limits of the outboundaries of the tract, cannot be sustained.

The act creating the Court of Private Land Claims (above cited) provides in the first subdivision of section 13 for the confirmation of imperfect grants.

This court has construed the language there used to mean "not only that the title was lawfully and regularly derived, but that if the grant were not complete and perfect, the claimant could, by right and not by grace, have demanded that it should be made perfect by the former government, had the territory not been acquired by the United States." *Ainsa v. United States*, 161 U. S. 208, 223.

The same construction was upheld in *United States v. Santa Fé*, 165 U. S. 675, 714, and it is again approved in *United States v. Sandoval*, 167 U. S. 278, 293. After a full consideration of the case we must hold there is not sufficient evidence to show that at the time of the cession of the Territory of New Mexico to the United States the predecessors or grantors of the petitioner had any title of any kind whatever, perfect or imperfect, to the land described in the petition herein, and,

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consequently, there could be no confirmation of any alleged imperfect title or grant.

The judgment of the Court of Private Land Claims must, therefore, be reversed on the appeal of the United States, and the record remanded to that court, with directions to enter judgment in conformity with this opinion.
